

Bail Slip

The Appellant Viz., Chitra, Appellant/accused aged 28, W/O Periasamy was directed to be released on bail by order of this Court, dated 04/04/2016 made in Crl.M.P.No.2474 of 2016 in Crl.A No.643 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.643 of 2015

Chitra ... Appellant/Accused

vs.

The State, by
The Inspector of Police,
Mecheri Police Station,
Salem District.
(Crime No.9 of 2012)

.... Respondent /Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 14.09.2015 passed by the learned Principal Sessions Judge, Salem, in S.C.No.181 of 2014.

For Appellant : Mr.M.Devaraj

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the sole accused in Sessions Case No.181 of 2014, on the file of the learned Principal Sessions Judge, Salem. The appellant/accused stood charged for offence punishable under Section 302 of IPC. The trial Court, after trial, by judgement dated 14.09.2015, convicted the appellant/accused under Section 302 IPC., and sentenced her to undergo life imprisonment and also to pay a fine of Rs.10,000/-,

in default, to undergo rigorous imprisonment for two months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased, in this case, one Periyasamy, is the husband of the accused. The deceased is a lorry driver and the accused is working as a coolie. The deceased used to go to his house only once in a week. On 06.10.2012, suspecting the fidelity of the accused, the deceased quarrelled with her and during the quarrel, the deceased beaten the deceased and at about 12.00 p.m., (night), when the deceased was sleeping in his house, the accused poured boiling oil on the deceased.

(ii) P.W.1, the neighbour of the deceased, took the deceased to the Government Mohan Kumaramangalam Medical College Hospital, Salem. P.W.5, the Doctor, working in the causality, admitted the deceased in the hospital at about 1.00 a.m., and found 70% burn injuries and he gave Accident Register (Ex.P6). P.W.6, the learned Judicial Magistrate No.II, Salem, on receipt of the memo from the Government Hospital, on 07.01.2012 at about 10.05 a.m., proceeded to the Government Hospital and recorded the dying declaration of the deceased after being satisfied that the deceased was conscious and in fit state of mind to give dying declaration. Then, P.W.1 lodged a complaint(Ex.P1) before the respondent police.

(ii) P.W.9, the Sub Inspector of Police, working in the respondent police, on receipt of the complaint from P.W.1, registered a case in Crime No.9 of 2012 for the offence under Sections 294(b) and 307 of IPC and prepared FIR (Ex.P9) and sent the same to the Judicial Magistrate Court as well as to the higher officials.

(iii) P.W.10, the Inspector of Police, working in the respondent police, on receipt of the First Information Report, commenced the investigation, on 07.01.2012 at about 8.00 a.m., proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P5), drew Rough Sketch (Ex.P10) in the presence of witnesses. He recovered a container with oil (M.O.1), sample soil (M.O.2) and Oil stained saree piece (M.O.3) under a seizure mahazar(Ex.P.11) in the presence of witnesses. He examined the witnesses and recorded their statements. At about 3.15 p.m., he arrested the accused and on such arrest, she voluntarily given a confession and based on the disclosure statement (Ex.P12), he seized the Aluminium vessel (M.O.5) used for boiling the oil and empty oil cover (M.O.6) in the presence of witnesses and he sent the accused for judicial custody. On 14.01.2012, the deceased succumbed to injury and hence he altered the case one under Section 302 IPC, alteration report Ex.P16. Then, he went

to the Government Hospital, Salem and conducted inquest over the dead body of the deceased in the presence of Panchayatdars, inquest report (Ex.P17) and sent the dead body for postmortem. Then, he sent a memo to the learned Chief Judicial Magistrate Court, Salem for recording the statement of witnesses under Section 164 Cr.P.C. and he sent the material objects to the Forensic Laboratory for chemical examination.

(iv) P.W.2, the Doctor, working in the Government Mohan Kumaramangalam Medical College Hospital, Salem conducted postmortem on the dead body of the deceased and found the following injuries.

Injuries:

Dermo epidermal burns over face, front and sides and back of neck, front of chest and abdomen, pelvic region, front of both thighs, both upper limbs including hands, right side upper back, back of lower part of both sides abdomen, both ears, both lips, internal aspect of mouth, Larynx. Burnt areas shows hyperaemic with foul, smelling yellow colour pus over it. Scalp hair, axillary hair, eyebrow signed pubic hair partly signed (antemortem) No other antemortem injuries seen anywhere on the body.

He opined that the deceased would appear to have died of burn injuries. He issued Postmortem Certificate (Ex.P2).

(v). P.W.10, examined the postmortem Doctor and other witnesses and recorded their statements and after completion of investigation, laid the charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 11 witnesses, exhibited 20 documents, besides marking 6 material objects.

4. Out of the witnesses examined, P.W.1 is the neighbour of the deceased. According to him, on 06.01.2012 at about 12.00 p.m., (night), he heard the noise from the house of the deceased and after hearing the noise, he along with others rushed to the house of the deceased and found the deceased with burn injuries and at that time the deceased told him that the accused only poured boiling oil on him. He further stated that immediately, he took him to the Government Hospital, Salem through 108 ambulance and thereafter he lodged a complaint before the respondent police. P.W.2, Doctor, working in the Government Hospital, Salem conducted postmortem on the dead body of the deceased and issued Postmortem Certificate (Ex.P2). P.W.3 is

the another neighbour of the deceased. He has spoken about the quarrel between the accused and the deceased. P.W.4 is the witness to the observation mahazar. P.W.5 is the Doctor working in the Government Mohan Kumaramangalam Hospital, Salem, admitted the deceased in the hospital and gave Accident Register (Ex.P6). According to him, at the time of admission, the deceased told him that his wife poured boiling oil on him. P.W.6, the learned Judicial Magistrate No.II, Salem, on receipt of the memo from the Government Hospital, on 07.01.2012 at about 10.05 proceeded to the Government Hospital, Salem and after being satisfied that the accused was conscious and in a fit state of mind to give dying declaration and obtained necessary certificate from the duty Doctor, he recorded the dying declaration. In the dying declaration, the deceased told him that the deceased has given money to the accused for buying chudithar to his daughter, but the accused failed to do so and hence there was a quarrel between the accused and the deceased and during the quarrel, the deceased beaten the accused and at about 12.00 p.m., (night) when the deceased was sleeping in the house, the accused poured boiling oil on the deceased. P.W.7 is the daughter of the deceased and the accused and she is also an eye witness to the occurrence. According to her, on the date of occurrence, when she was sleeping the house, the accused poured boiling oil on the deceased and oil also spill on her hand. P.W.8, the learned Judicial Magistrate No.II, Salem, recorded the statement of witnesses under Section 164 Cr.P.C. P.W.9, the Sub Inspector of Police, attached to the respondent police station, on receipt of the complaint, registered a case and sent the FIR to the Judicial Magistrate Court as well as to the higher officials. P.W.10, the Inspector of Police, attached to the respondent police station, on receipt of the FIR, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the material objects, sent the material objects for chemical examination and after completion of investigation, laid the charge sheet. P.W.11, the Head Clerk, working in the Judicial Magistrate Court, Salem sent the material objects to the Forensic Laboratory for chemical examination.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. Her defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above materials, the Trial Court convicted and sentenced the accused for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court.

7. We have heard Mr.M.Devaraj, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In the instant case, P.W.7 is the daughter of the accused and the deceased and she is an eye witness to the occurrence. According to the prosecution, on the date of occurrence, the deceased has given money to the accused for buying chudithar to his daughter, but the accused failed to purchase the chudithar and hence there was a quarrel between the accused and the deceased, during the quarrel, the deceased beaten the accused and at about 12.00 p.m., (night), when the deceased was sleeping in the house, the accused poured boiling oil on the deceased and caused 70% burn injuries. Subsequently, the deceased was admitted in the Government Hospital, Salem, where, on 07.01.2012, the deceased has given a judicial dying declaration before the learned Judicial Magistrate No.II, Salem. In the dying declaration, he has stated that there was a quarrel between the accused and the deceased and during the quarrel, he has beaten the accused, being provoked by the same, the accused poured boiling oil on him, while he was sleeping. The learned Judicial Magistrate No.II, Salem, before recording the dying declaration, she was fully satisfied that the deceased was conscious and in fit state of mind to give dying declaration and also obtained necessary certificate from the duty Doctor and he recorded the dying declaration and at the time of recording dying declaration nobody was present. Apart from that at the time of admitting the deceased in the hospital by P.W.5, the deceased stated that his wife poured boiling oil on him. P.W.7 is the daughter of the accused and the deceased and an eye witness to the occurrence. In her evidence, she deposed that while the deceased, accused and herself sleeping in the house, at the time the accused poured boiling oil on the deceased and caused injuries. Since the occurrence took place in side the house, the presence of P.W.7 is natural. Therefore, we have no reason to disbelieve the evidence of P.W.7. Hence, considering the dying declaration of the deceased and also the evidence of P.W.7, we are of the considered opinion that the prosecution has proved the guilt of the accused beyond any reasonable doubt and this accused alone poured boiling oil on the deceased and caused his death.

9. Now, the next question is "what was the offence that the accused has committed by the said act". In the judicial dying declaration of the deceased, it is clearly stated that before the occurrence, there was a quarrel between the accused and the deceased and during the quarrel, the deceased beaten the accused

and being provoked by the same, the deceased poured boiled oil on the deceased. Hence, the act of the accused would squarely fall within the first exception to Section 300 of IPC, and fall within the 4th limb of Section 300 IPC., and therefore, the accused is liable to be punished under Section 304(ii) IPC.

10. Turning to the quantum of punishment, the accused is a poor coolie and she is having two children. It is not a premeditated murder and she has no intention to cause death of the deceased. Taking into consideration of the totality of circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

11. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant in S.C.No.181 of 2014 dated 14.09.2015, on the file of the learned Principal Sessions Judge, Salem for an offence under Section 302 IPC is set aside and instead, she is convicted for an offence under Section 304(ii) IPC and sentenced her to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of imprisonment already undergone by the appellant/accused shall be set off as required under Section 428 Cr.P.C. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure her and commit her to prison to undergo remaining period of sentence.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Salem.
- 2.The Inspector of Police,
Mecheri Police Station,
Salem District.
- 3.The Public Prosecutor,
High Court, Madras.

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4.The Judicial Magistrate II,
Mattur.

5.-Do- Thro The Chief Judicial Magistrate,
Salem.

5.A.The Judicial Magistrate II,
Salem.

6.The District Collector,
Salem.

7.The Director General of Police,
Chennai.

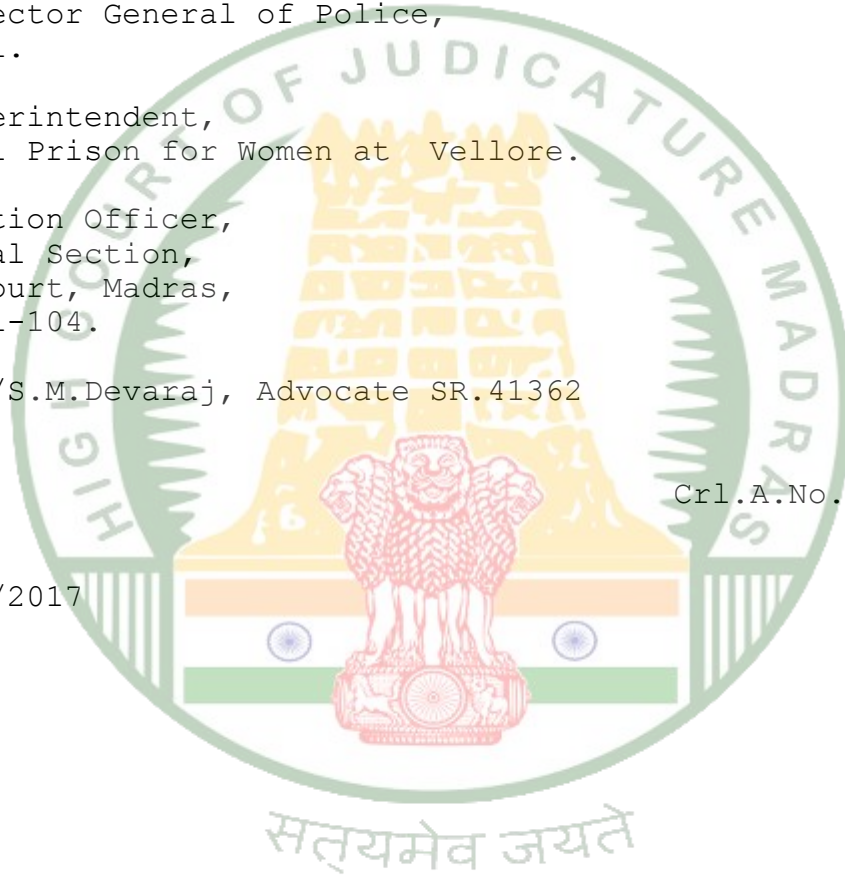
8.The Superintendent,
Central Prison for Women at Vellore.

9.The Section Officer,
Criminal Section,
High Court, Madras,
Chennai-104.

+1cc to M/S.M.Devaraj, Advocate SR.41362

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