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BAIL SLIP

The accused namely Viz A.Murugan, S/o.Arumugam was directed to be released on bail as per order dated 05.02.2013 made in MP.NO.1/2012 in Crl.A.No.27/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.27/2012

A.Murugan
accused

.. Appellant/sole

Vs

State by
The Inspector of Police,
Namakkal Police Station,
Namakkal.

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court, Namakkal, in S.C.No.89 of 2010, dated 13.09.2010.

For Appellant : Mr.N.Manokaran,
Legal Aid Counsel

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



JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

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The appellant is the sole accused in S.C.No.89 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Namakkal. He stood charged for the offences under Sections 302 and 201 of IPC. By judgment dated 13.09.2010, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 of IPC and to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 3 months for the offence under Section 201 of IPC. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Malliga and the accused is her husband. The marriage between the deceased and the accused happened 19 years before the occurrence. They have got a female child, namely, Divya, aged about 18 years. During the relevant period of time, the child was staying in a hostel and studying. The accused and the deceased were earlier residing at Sankagiri. In due course of time, the accused started developing the habit of drinking. In drunken state, he used to quarrel with the deceased on many occasions and even to beat her. The accused spent his earnings only for drinking and he did not give anything for the maintenance of the family. Since the life of the deceased was so horrible at the hands of the accused, the family members of the deceased, namely, P.W.1 (the brother of the deceased), P.W.3 (the father of the deceased) and others brought the family of the accused and the deceased to her village.

(b) The deceased and the accused were residing in the first floor of the house owned by P.W.4 Tmt.Saroja. Saroja was residing in the ground floor. Even after settling down at Chinnamudalaipatti Village, at the house of P.W.4, the accused did not stop drinking. He frequently came in drunken state and developed quarrel with the deceased thereby making the life of the deceased so horrible. The deceased was bearing all these tortures in the larger interest of her matrimonial life.



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(c) While so, on 08.01.2010, P.W.4 was in her house in the ground floor. At that time, she heard the shoutings of the accused from the first floor where the deceased and the accused were residing. On hearing the same, sensing that the accused was fighting with the deceased, P.W.4 went to the house of P.W.1 which is situated at a distance of 4 houses away from the place of occurrence. P.Ws.1, 3 and the mother of the deceased immediately rushed to the place of occurrence along with P.W.4. When they were nearing the house of the deceased, they smelt a bad odour emanating from the first floor of the house. Sensing some foul play, P.Ws.1, 3 and others came up through the stairs to go to the first floor. The accused, at that time, climbed down the stairs, after throwing a plastic kerosene Can on the terrace of the house. He rushed out of the house on seeing P.Ws.1, 3 and others. P.Ws.1, 3 and others further went into the house of the deceased. When they entered into the room, they found the deceased lying on the floor covered by a blanket. The blanket was also burning. When they removed the blanket, they found that the deceased had burn injuries. She had a deep blood injury on the middle of her fore head. There were also bleeding injuries on her cheeks, chest, legs and other parts of the body. P.Ws.1, 3 and others raised alarm which attracted the neighbours to the place of occurrence. The personal belongings of the deceased such as bangles and dollar were all found lying near the dead body. The dress worn by the deceased was completely burnt. Then, P.W.1 informed P.W.2, the Panchayat Board President about the occurrence over phone.

(d) P.W.2 immediately rushed to the place of occurrence, took the dead body in an Ambulance to the Government Hospital, Namakkal. But the Doctor told P.W.2 to go to the Police Station first to make a complaint and then only, he could receive the dead body into the hospital. Accordingly, as dictated by P.W.1, P.W.2 drafted a complaint under Ex.P.1. Then P.Ws.1 and 2 went to the Namakkal Police Station and presented the said complaint at 01.00 a.m. on 09.01.2010. P.W.7, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.39 of 2010 under Sections 302 and 201 of IPC against the accused. Ex.P.8 is the First Information Report. Then, he forwarded both the documents to court which were received by the learned Judicial Magistrate at 03.00 a.m. on 09.01.2010.

(e) The case was taken up by P.W.10 for investigation. He proceeded to the place of occurrence at 07.30 a.m. and prepared an observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. He



recovered material objects from the place of occurrence under a Mahazar. Then, he conducted autopsy on the body of the deceased and forwarded the same for postmortem.

(f) P.W.6 Doctor Rajmohan conducted autopsy on the body of the deceased on 09.01.2010 at 4.00 p.m. He found the following injuries on the body of the deceased :

'A moderately nourished female body lies on its back.

External Examination:

(i) Hair present on the temporal and parietal occipital region-only the frontal hair got burnt;

(ii) Bleeding from both nostrils present;

(iii) i&ii burns involving the entire back of the body from neck to leg level on the posterior side on the anterior side middle of the right thigh and right leg not involved in burns;

(iv) Injury of nasal bone on the left side corner of left maxilla.

Internal Examination : opening of thorax: No injury of ribs. Heart intact c/s. Chambers empty. Lungs: Intact C/s. Pale. Neck: Hyoid bone Intact. Opening of Trachea & Larynx - No Black spots seen. Opening of abdomen: Stomach 150ml of partly digested food particles present. Intestines: bilated with gees & fluid. Liver: Intact c/s. congested. Spleen: Intact c/s congested. Findings: Intact c/s pale. Uterus : Found empty. Bladder: empty. Opening of skull: Injuries of base of the cranial Fossa + 'c ' Blood collection present in the cranial cavity about 100ml. Injuries of 1 Nosal bone present. Injuries of left maxilla present. Other parts found: Intact. Spinal column: found intact.'

Ex.P.7 is the Postmortem Certificate. He gave opinion that the death was due to shock and hemorrhage due to the injuries found on the body of the deceased. He further opined that the said injuries including the fracture of skull bone could have been caused by dashing the deceased against the wall.

(g) When the investigation was in progress, the accused appeared before P.W.5, the then Village Administrative Officer, Namakkal, at 4.00 p.m. and made a voluntary confession. P.W.5 after having satisfied that the accused was making voluntary confession, recorded the same. In the said confession, the accused disclosed that with a view to do away the deceased, he attacked her and with a view to erase the evidence, he set fire to the dead



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body of the deceased. P.W.5 produced the accused along with the extra-judicial confession before P.W.10-the then Inspector of Police. P.W.10 arrested the accused. While in police custody, he made a voluntary confession. Then, he forwarded the accused to court for judicial remand. He forwarded the material objects also to the court. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined and 10 documents and 11 material objects were also marked.

4. Out of the said witnesses, P.Ws.1, 3 and 4 have stated about the quarrel between the deceased and the accused. They have further stated that on the information given by P.W.4, when P.W.1 and P.W.3 went to the place of occurrence, they found the accused claiming down in the stairs and fleeing away from the scene of occurrence. P.W.5 has spoken about the extra judicial confession given to him by the accused. P.W.6 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.7 has spoken about the registration of the case on the complaint of P.W.1. P.W.8 is a police constable who has stated that he handed over the F.I.R. to the learned Judicial Magistrate. P.W.9 has stated that he took the dead body of the deceased from the place of occurrence to the hospital for postmortem. P.W.10 has spoken about the investigation done by him and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted all the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

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



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8. This is a case based on circumstantial evidence. The first and foremost circumstance projected by the prosecution is that there were frequent quarrels between the accused and the deceased. This is not seriously disputed by the accused.

9. The next circumstance projected by the prosecution is that on the day of occurrence, at the house of the deceased, the accused and the deceased alone were there. Their daughter was staying in a hostel. P.W.4 had heard the shoutings of the accused from the first floor of the house where the deceased and the accused were residing. Sensing that the accused was fighting with the deceased, out of goodwill, she immediately had informed P.Ws.1 and 3 about the same. P.Ws.1, 3 and the mother of the deceased had immediately rushed to the house of P.W.4. P.W.4 was standing on the ground floor whereas P.Ws.1, 3 and the mother of the deceased climbed up through the stairs. At that time, according to these witnesses, the accused was found fleeing away from the scene of occurrence by climbing down the stairs, after throwing the kerosene Can on the open terrace of the house. The Can was later on seized by the police also.

10. The learned Counsel for the appellant would submit that the evidences of P.Ws.1 and 3 cannot be believed because they are highly interested in the case of the prosecution. We do not find any force at all in this argument. Simply because, P.W.1 and P.W.3 are the brother and sister respectively of the deceased, their evidence cannot be abruptly rejected. It only requires close scrutiny. Their presence and their having seen the accused fleeing away from the scene of occurrence are duly corroborated by P.W.4. P.W.4 is an independent witness. She was the land lord of the accused and the deceased. She has stated that when she was standing in the ground floor, she found the accused fleeing away from the place of occurrence. Thus, we do not find any reason to reject the evidence of P.Ws.1, 3 and 4. From these evidences, it has been clearly established that the accused was there in the house and he was found fleeing away from the place of occurrence after throwing the kerosene Can on the open terrace of the house.

11. After having seen the accused, when P.Ws.1 and 3 rushed into the house, they found the deceased in the room lying on the floor, covered by a blanket. The blanket was also burning. When they removed the blanket, they found that there were extensive injuries on the body of the



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deceased. Blood stains were also found on the floor. The personal belongings of the deceased, such as, the Bangles and Dollar were found lying near the dead body of the deceased. The Doctor who conducted autopsy has stated that the death was not due to burn injuries, but, it was due to the other injuries found on the body of the deceased. His further opinion was that the other injuries on the body of the deceased would have been caused by dashing the head of the deceased against the wall. Thus, after the deceased had breathed her last, the accused in order to erase the evidence, had set fire to the body by pouring kerosene.

12. The prosecution also relies on the extra-judicial confession said to have been given by the accused to P.W.5, the Village Administrative Officer. The learned Counsel for the appellant would try to assail the said extra-judicial confession on the ground that the accused had no reason to repose faith in P.W.5 who is a stranger to him to make such an Extra-judicial confession. We find force in the said argument of the learned Counsel for the appellant. This merely creates some doubt about the extra-judicial confession. If the extra-judicial confession is the only piece of evidence available against the accused, then, for want of corroboration to the said doubtful extra-judicial confession which by its very nature is a weak piece of evidence, this Court may find it difficult to sustain the conviction. But, in the instant case, even ignoring the extra-judicial confession given by the accused to P.W.5, from the other circumstances about which we have already discussed, we find that the prosecution has clearly established that it was this accused, who caused extensive injuries on the body of the deceased, killed her and then burnt the body.

13. We want to reiterate that the conduct of the accused in fleeing away from the place of occurrence, when P.Ws.1 and 3 claimed up the stairs is a very strong circumstance against the accused which has not been explained away properly. This gives rise to a presumption against the accused as per Section 114 of the Indian Evidence Act that it was this accused who was responsible for the death of the deceased. Of course that presumption is rebuttable. But the accused has failed to rebut the said presumption either by means of any direct evidence or by means of any circumstantial evidence. Thus, in the instant case, we find that the prosecution has proved the above circumstances beyond reasonable doubts and all such circumstances pointed out only the guilt of the accused. Having come to the above conclusion, we have to now examine as to what was the offence, the accused had committed.



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14. The learned Counsel for the appellant would submit that in the quarrel between the deceased and the accused, having lost his mental balance, the accused would have caused the death of the deceased and therefore, the offence would fall under Section 304-II of IPC.

15. We are not persuaded by the said argument. Absolutely, there is no evidence to even to infer that the deceased had provoked the accused. As per the evidence of P.W.4, it was this accused, who shouted at the deceased. Thus, there is no material on record, even to remotely infer that the deceased would have provoked the accused, so as to make him to loose his mental balance to cause the death of the deceased.

16. In such view of the matter, we hold that the act of the accused would not fall under Exception I to Section 300 IPC as it is argued by the learned Counsel for the appellant. We hold that the act of the accused squarely falls within the third limb of Section 300 of IPC and thus, he is liable to be punished for the offence under Section 302 of IPC and for having burnt the dead body of the deceased with an intention to cause disappearance of the evidence, he is liable to be punished under Section 201 of IPC. Thus, the trial court is right in convicting him under both the penal provisions. So far as the sentence is concerned, the trial court has imposed only minimum sentence which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

17. In the result, the appeal fails and the same is accordingly dismissed and the conviction and sentence imposed on the appellant by the trial court is hereby confirmed. The bail bond shall stand cancelled. The trial court shall take steps to secure the accused and commit him to prison to undergo the unexpired portion of the sentence.



18. While parting with the case, we appreciate the services rendered by Mr.N.Manokaran, the learned Counsel, who argued the case on behalf of the appellant as a Legal Aid Counsel, by taking us through the entire evidences as well. The Legal Services Authority is directed to pay his remuneration.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
Namakkal Police Station,
Namakkal.
2. The Additional Sessions Judge,
Fast Track Court, Namakkal
- 3.The Public Prosecutor,
High Court, Chennai.
- 4.The District and Sessions Judge,
Namakkal
- 5.The Judicial Magistrate-I, Namakkal
- 6.-do-Thro The Chief Judicial Magistrate
Namakkal
7. The Secretary
Legal Services Authority,
Chennai
- 8.The Superintendent Central Prison,
Coimbatore

+1 cc to Mr.N.Manokaran Advocate sr.16331

Cr1.A.No.27/2012

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