

Bail Slip:-The Appellant/Accused viz., Murugan S/o. Narayanan aged about 30 years was directed to be released on bail in and by the order dated 3.6.2013 made in M.P.NO.2 of 2013 in Crl.A.No.299/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.299/2012

Murugan

..Appellant/ Sole Accused

Versus

The State represented by
The Inspector of Police
Karimangalam Police Station
Dharmapuri District.

..Respondent/ Complainant

Appeal filed under section 374 [2] Cr.P.C., against the judgment passed in SC.No.46/2011 dated 09.04.2012 by the learned Principal District and Sessions Judge, Dharmapuri.

For Appellant : Mr.D.S.Rajasekaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in SC.No.46/2011 on the file of the learned Principal District and Sessions Judge, Dharmapuri. By judgment dated 09.04.2012, the Trial Court convicted the appellant/accused for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for 3 years. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.

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follows:-

The case of the prosecution in brief, is as

[A] The deceased in this case was one Mrs.Krishnammal. She was already married to one Rajendran, through whom, she had two children. Rajendran subsequently died. Thereafter, the accused developed illicit intimacy with the deceased. The accused is already married to yet another Krishnammal. The deceased Krishnammal had an alias name as "Thayammal".

[B] It is alleged that the accused had borrowed a sum of Rs.35,000/- from the deceased. The deceased was insisting for repayment of the said money to her. But the accused was evasive. This resulted in frequent quarrels between them. It is further alleged that in view of the said quarrels, the accused decided to do away with the deceased. This is stated to be the motive for the occurrence.

[C] On 17.08.2010, it is alleged that at about 21.00 hrs. she had gone to the house of the accused to demand the repayment of the said amount. This resulted in a quarrel and at that time, it is alleged that the accused poured kerosene and set fire to her. The deceased, rushed out of the house of the accused in flames. P.Ws.1 to 3, who are neighbours of the accused and the deceased, on hearing the alarm raised by the deceased, rushed to the house of the accused. They found the deceased rushing out of the house of the accused in flames and then, she fell down. They extinguished the fire. The accused himself poured water on the deceased to extinguish the fire. When P.Ws.1 to 3 enquired the deceased, she told them that it was only this accused who poured kerosene and set fire to her. P.W.1, thereafter informed the relatives of the deceased. They made arrangement for 108 Ambulance service and took the deceased to the Government Hospital at Dharmपुरi.

[D] P.W.8-Dr.P.Guruswamy, examined the deceased at 22.30 hrs on 17.08.2010. At the Government Hospital, Dharmपुरi. He found 90% burn injuries on the body of the deceased. The deceased was still conscious. She told him that at 21.00 hrs., her husband had poured kerosene and set fire to her. Ex.P.2 is the Accident Register. He admitted her as an In-patient. Then, P.W.8 gave intimation to the police in respect of the same.

[E] P.W.15, the Head Constable, attached to Karimangalam Police Station, on receipt of the said intimation, rushed to the hospital and recorded the statement of the deceased [Ex.P.8] at 09.00 hrs. on 18.08.2010. On returning to the Police Station, he handed over the same to P.W.16, the then Sub Inspector of Police attached to the said Police Station. P.W.16, on receipt of the said statement from P.W.15, registered a case in Cr.No.742/2010 for the offence u/s.307 IPC against the accused. Ex.P.9 is the Printed F.I.R. He forwarded the documents, viz., Ex.P.1 [complaint] and Ex.P.9 [F.I.R] to the Court, which were received by the learned Judicial Magistrate at 17.15 hrs. on 18.08.2010.

[F] P.W.19, the learned Judicial Magistrate No.2, Dharmapuri, on receipt of the intimation from the Government Hospital, Dharmapuri, rushed to the hospital at 10.55 a.m. on 18.08.2010. One Dr.R.Nandakumar [P.W.14] was attending on the deceased. The doctor, after examining the deceased, gave opinion that the deceased was conscious. P.W.19, by asking few questions and eliciting answers from the deceased and from all the other circumstances, was satisfied that the deceased was making the dying declaration in a fit state of mind. Then, he recorded the dying declaration of the deceased at 11.00 hrs. Ex.P.12 is the said judicial dying declaration.

[G] The case was taken up for investigation by P.W.20, the Inspector of Police attached to Karimangalam Police Station. He proceeded to the place of occurrence at 10.30 hrs. on 18.08.2010 and prepared the Observation Mahazar [Ex.P.1] and a Rough Sketch [Ex.P.13] in the presence of P.W.7 and another witness. On going to the hospital, he recorded the statement of the deceased. He also examined P.Ws.1 to 6 and recorded their statements. On the same day, at about 14.30 hrs. he arrested the accused in the presence of P.W.11 and another witness. On such arrest, the accused gave a voluntary confession [the admissible portion of which is marked as Ex.P.5], in which he disclosed the place where he had hidden a white colour plastic can. In pursuance of the same, he took the police and the witnesses to the place of hide out, viz., to Aruneswarar kovil, and produced M.O.1-white colour plastic can. P.W.20 recovered the same under a Mahazar [Ex.P.6] in the presence of the same witnesses.

[H] On 25.08.2010, at 10.30 hrs. the deceased succumbed to the injuries in the hospital. On receipt of the death intimation, P.W.20 altered the case into one u/s.302 IPC and submitted the alteration report [Ex.P.10] to the Court. He then held inquest on the dead body of the

deceased on the same day between 10.30 hrs and 12.30 hrs. and forwarded the body for postmortem.

[I] P.W.10, the then Assistant Surgeon attached to the Government Hospital, Dharmapuri, conducted autopsy on the dead body of the deceased on 25.08.2010 at 13.05 hrs. He found 90% burn injuries on the body of the deceased. He gave opinion that the death was due to the burn injuries. Ex.P.4 is the Postmortem Certificate.

[J] P.W.20, continuing the investigation, examined the witnesses and recorded their statements. He also examined the doctor who conducted autopsy on the deceased and upon transfer, further investigation was taken up by P.W.21 on 20.02.2011. P.W.21, on completion of the investigation, laid the charge sheet against the accused for the offence u/s.302 IPC on 28.02.2010.

[K] Based on the above materials, the Trial Court framed charges against the accused 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 21 witnesses were examined, 15 documents and one material object were also marked.

[L] Out of the said witnesses, P.W.1 is a neighbour of the accused as well as the deceased. She has stated about the illicit relationship between the accused and the deceased. She has further stated that on the day of occurrence, she found the deceased running out of the house of the accused in flames. After extinguishing the fire, when she enquired, the deceased told her that it was this accused who poured kerosene and set fire to her. Then, according to her, relatives of the deceased came and took her to the hospital. P.W.2 is yet another neighbour, who has also stated about the same facts. P.W.3 is also a neighbour of the deceased. She has stated that at the time of occurrence, she found the deceased rushing out of the house of the accused in flames. The accused followed her and poured water on her to extinguish the fire. She has further stated that when she enquired the deceased, the deceased told her that it was this accused who poured kerosene and set fire to her. P.W.4 has stated that she went to the place of occurrence on hearing the hue and cry and she found the deceased lying with burn injuries. She further stated that thereafter, the injured was taken to the hospital. P.W.5 is a relative of the deceased. She has stated that on hearing the information about the occurrence, she came to the place of occurrence and took the deceased to the hospital and she has also stated about the fact that the accused, having borrowed a sum of

Rs.35,000/- from the deceased, had not returned the same and on account of the same, there were frequent quarrels between the accused and the deceased. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 has also stated about the same. P.W.8 has stated that he examined the deceased on 17.08.2010 at 22.30 hrs. He further stated that the deceased was conscious and had told him that her husband poured kerosene and set fire to her. He has further stated about the treatment given to the deceased. P.W.9 has spoken about the motive. He has further stated that he took the deceased in the Ambulance to the Government Hospital, Dharmapuri. P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the arrest of the accused on 18.08.2010 at 14.30 hrs. and the consequential recovery of M.O.1, on the disclosure statement made by the accused. P.W.12 has again spoken about the motive. She is the relative of the deceased. She has also stated that the deceased had told her that it was this accused who poured kerosene and set fire to her. P.W.13 is the brother of the deceased and he has stated about the money transaction between the deceased and the accused and the consequential motive. P.W.14, Dr.Nandakumar, has stated that he has certified to the learned Magistrate that the deceased was conscious and thereafter, the learned Magistrate recorded the judicial dying declaration. P.W.15 has stated that he went to the hospital on intimation and recorded the statement of the deceased under Ex.P.8 and on returning to the Police Station, he handed over the same to P.W.16, the Sub Inspector of Police. P.W.16 registration of the case and the investigation done by him. P.W.17 is the Special Sub Inspector of Police who had handed over the altered FIR [Ex.P.10] to the Court. P.W.18 is the Head Constable who accompanied P.W.17 to the Court. P.W.19 is the learned Judicial Magistrate No.2, Dharmapuri, who has stated about the dying declaration recorded by him. P.Ws.20 and 21 have spoken about the investigation done by them and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, on the side of the accused, one Krishnammal, was examined as D.W.1. She is the wife of the accused. She has stated that on the day of occurrence, at 19.00 hrs., when the accused was in his house, the deceased came and wanted him to come to her house since they were having illicit relationship. When the accused declined to come, the deceased herself poured kerosene and set fire to herself. Ex.D.1 has been marked on the side of the

accused. It is the marriage invitation card for the marriage between the accused and DW.1.

4 Having considered all the above, the Trial Court convicted and sentenced him for the offence u/s.302 IPC, as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

5 We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case based on circumstantial evidence. So far as the motive is concerned, there is enormous evidence available, wherein it is stated that the accused had borrowed a sum of Rs.35000/- from the deceased, which he failed to return to the deceased. In our considered view, the said transaction stands proved.

7 The next circumstance is on the day of occurrence, when the accused was in his house, the deceased had gone there. This has been spoken to by DW.1. The deceased demanded the money back. This resulted in a quarrel. But, what was the nature of the quarrel and for how long, it went on, have not been spoken by anybody. The only evidence available is that the deceased was found rushing out of the house of the accused in flames. P.W.3 has stated that the accused followed the deceased and extinguished the fire. All these witnesses had enquired the deceased and at that time, the deceased had told that it was this accused who poured kerosene and set fire to her. This is the earliest dying declaration given to the independent witnesses. We do not find any reason to doubt the veracity of these witnesses who have got no axe to grind against the accused. From the evidence of these witnesses, viz., P.Ws.1 to 3, the prosecution has clearly established that at the earliest point of time, the deceased had told them that it was this accused who poured kerosene and set fire to her.

8 After going over to the hospital, the deceased told P.W.8 [Dr.Guruswamy] at 22.30 hrs on 17.08.2010 that her husband poured kerosene and set fire to her. The doctor also found 90% burn injuries on her and the deceased was still conscious. It is not in controversy that the legally married husband of the deceased died long before. The accused alone was living with her. This has been spoken even by DW.1. Thus, the statement of the deceased to the doctor that her husband alone poured

kerosene and set fire would clearly point out that it was this accused who poured kerosene and set fire to her. This is the second dying declaration, upon which reliance could be made and we do not find any reason to reject the same.

9 The next circumstance is the dying declaration recorded by P.W.15, Mr.Sivaji, the Head Constable attached to Karimangalam Police Station. On getting intimation from the hospital, he had gone to the hospital at 09.00 hrs. on 18.08.2010. The deceased gave a statement under Ex.P.8 in which also, she had stated that it was this accused who poured kerosene and set fire to her. The learned counsel appearing for the appellant would assail Ex.P.8 on the ground that there was no certificate obtained from the doctor. It is true that there was no certificate obtained from the doctor in respect of the condition of the deceased. Had this dying declaration been the only document, then, we may doubt the mental fitness of the deceased and we may reject the same. But, the fact remains that this is not the only document. Immediately thereafter, P.W.19 [Judicial Magistrate No.2, Dharmapuri] had gone to the hospital at 10.00 hrs on 18.08.2010. P.W.14 [Dr.Nandakumar], after examining the deceased, had given a certificate that the deceased was conscious. The learned Magistrate, after eliciting answers to his questions and after having made an overall assessment of the deceased, had satisfied himself that the deceased was in a fit state of mind to make a dying declaration. Thereafter only, he recorded Ex.P.12 [Judicial dying declaration]. In the said judicial dying declaration also, the deceased has stated that it was this accused who poured kerosene and set fire to her. Thus, between these multiple dying declarations, we do not find any discrepancy, except certain minor variations as pointed out by the learned counsel for the appellant. In our considered view, from these multiple dying declarations, we can safely conclude that it was this accused who poured kerosene and set fire to the deceased, which resulted in her death.

10 The next question is, what was the offence committed by the accused by his act?

11 A perusal of the dying declarations would go to show that there was quarrel between the accused and the deceased. The quarrel went on for a long time and the deceased had gone all the way to the house of the accused and developed quarrel. Only at the end of the quarrel, it is alleged that the accused poured kerosene and set fire. From the evidences available on record, it is crystal clear that the deceased had provoked him, which, in our considered view, was sudden and grave, which would have

made the accused to lose his mental balance. There was also no premeditation. Thus, the act of the accused would clearly fall within the first exception to section 300 IPC. Since the act of the accused in causing the death of the deceased would fall within the third limb of section 300 IPC and also under the first exception to section 300 IPC, we conclude that the accused is liable to be convicted for the offence u/s.304 [Part I] IPC.

12 Now turning to the quantum punishment, at the time of occurrence, the accused was hardly aged 25 years. He is a poor man and he has to maintain the entire family. He had no bad antecedents. After the occurrence also he has also not committed any crime. There is likelihood of reformation. Having regard to all these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo four weeks rigorous imprisonment, would meet the ends of justice.

13 In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant by the Trial Court for the offence u/s.302 IPC in SC.No.46/2011, vide judgment dated 09.04.2012, are hereby set aside and instead, he is convicted for the offence u/s.304 [Part I] IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1000/-, in default, to undergo four weeks rigorous imprisonment.

14 Since it is reported that the appellant is on bail, the bail bonds shall stand cancelled and the Committal Court shall take steps to secure the presence of the accused to undergo the remaining period of sentence. The period already undergone, shall be given set off.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

AP

To

1.The Principal District and Sessions Judge,
Dharmapuri.

2.The Inspector of Police
Karimangalam Police Station
Dharmapuri District.

3.The Judicial Magistrate
Palacode.

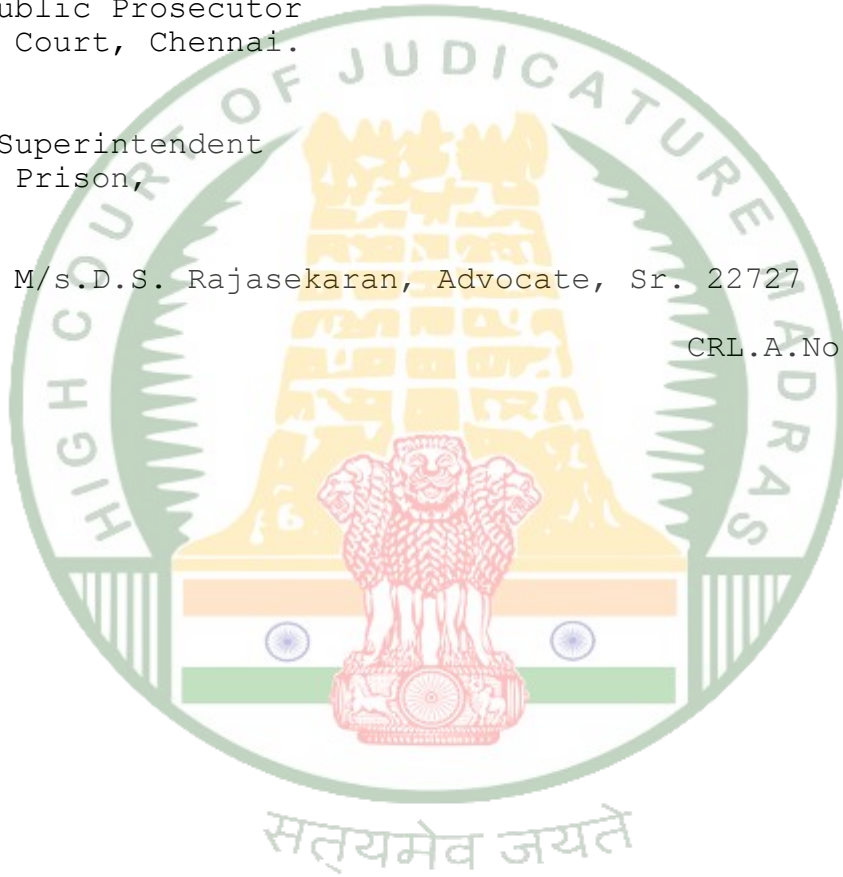
4.The Public Prosecutor
High Court, Chennai.

5, The Superintendent
Central Prison,
Vellore

1 cc to M/s.D.S. Rajasekaran, Advocate, Sr. 22727

CRL.A.No.299/2012

MP (CO)
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