

Bail Slip

The Appellant/Accused Viz., Mr.Kanagaraj is directed to be released on bail as per the order of the Court dated 28/1/14 and made in M.P.1/13 in CrI.A.No.333/12

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.333 of 2012

Mr.Kanagaraj .. Appellant/Sole Accused

Vs

State rep. By Inspector of Police,
Muthandikuppam Police Station,
Cuddalore District,
(Crime No.160 of 2008) .. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records and set aside the conviction judgment passed against the appellant by the learned Judge, Mahila Court, Cuddalore in S.C.No.144 of 2009 dated 18.02.2010 and set the appellant at liberty.

For Appellant : Mr.R.Sankarasubbu

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.144 of 2009 on the file of the learned Judge, Mahila Court, Cuddalore. He stood charged for offences under Sections 294(b) & 302 I.P.C.

By judgment dated 18.02.2010, the trial Court acquitted the accused from the charge under Section 294(b) I.P.C., and convicted him for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- (default sentence was not imposed). 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 Mrs.Vasantha. The accused is her husband. They had three children by name Ms.Kalayarasi (P.W.10); Ms.Kalailakshmi and Mr.Kalayarasan. P.W.10, Ms.Kalayarasi is the eldest child of the accused and the deceased. The accused had developed suspicion regarding the chastity of the deceased. On account of the same, there were frequent quarrel between the accused and the deceased. While so, it is alleged that on 28.09.2008, at about 5.30 pm, when the deceased was at her house, there was a quarrel between her and the accused. The accused warned her to change her attitude and to behave properly by giving up the bad relationship with others. The deceased told him that he could take any action against her by catching her red handedly when she would be indulging in sex with her paramour. This infuriated the accused. He suddenly took the kerosene can which was by their side, poured kerosene on her and set fire. This was witnessed by P.W.10 and the other children in the house. While in flames, the deceased ran out of the house and cried for help.

3.P.W.1 and the other neighbours rushed to her rescue, they extinguished the fire and immediately took her to the hospital at Cuddalore from where, she was referred to the Indira Gandhi Government General Hospital, Puducherry, where she was admitted as inpatient.

4.On getting intimation from the hospital, the then Sub Inspector of Police - P.W.16, Muthandikuppam Police Station went to the Indira Gandhi General Government Hospital, Puducherry, and recorded the statement of the deceased at 3.00 pm on 29.09.2008. On returning to the Police Station, he registered a case in Crime No.160/2008 for offences under Sections 294(b), 323, 307 r/w Section 4 of the Tamil Nadu Women Harassment Act, 2002. Ex.P.13 is the F.I.R. He forwarded both the documents to Court and handed over the case diary to P.W.17, the then Inspector of Police for investigation.

5.On receiving memo from the said Hospital on 28.09.2008, P.W.11, the then Judicial Magistrate No.1, Cuddalore went to the said Hospital at 9.30 pm. P.W.18-Dr.Tamilarasan was attending on the deceased. On examining the deceased, P.W.18 certified that the deceased was conscious and fit to make a statement. P.W.11

asked few questions and from the answers elicited from the deceased and also from the medical evidence, she was satisfied that the deceased was in a fit state of mind to make a dying declaration. Accordingly, she recorded the dying declaration of the deceased. Ex.P.7 is the said dying declaration.

6.The deceased died on 01.10.2008 at 8.15 am. On receiving intimation regarding the same, P.W.17, altered the case into one under Sections 294(b), 323, 307, 302 I.P.C., and Section 4 of the Women Harassment Act. Ex.P.14 is the alteration report. Then he went to the hospital to take photographs of the deceased and held inquest on the body of the deceased. Thereafter, he forwarded the body for post mortem.

7.P.W.14, conducted autopsy on the body of the deceased and found the following injuries on the body of the deceased:-

"External Injuries:-

Epidermal and dermo-epidermal burns over the entire face, neck, both breasts, part of upper abdomen, entire back of chest, both upper limbs, right leg & foot, and left ankle & foot."

8.Ex.P.9 is the Medico-legal post-mortem examination report. P.W.14, opined that the death was due to the extensive burnt injuries on the body of the deceased. P.W.17 continued the investigation and finally laid charge sheet against the accused.

9.Based on the above materials, the trial Court framed charges under Sections 294(b) & 302 I.P.C. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 16 documents were exhibited, besides 7 material objects.

10.Out of the prosecution witnesses, P.Ws.1 to 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence and the recovery of material objects such as Polyester Saree (M.O.1); pink colour petti coat (M.O.2); Yellow, Red and Black colours mixed Blouse (M.O.3); Match Box (M.O.4) and the half burnt match stick (M.O.5). He has also stated about the arrest of the accused on 30.09.2008 at 12.00 noon at Kadambaliur Bus Stop. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the Kerosene Can (M.O.6). According to this witness, the same was recovered under a mahazar, on the same being produced by the accused.

11.P.W.10-the daughter of the accused and the deceased, is an eye witness to the occurrence and she has stated about the entire occurrence. P.W.11 has stated about the recording of the dying declaration from the deceased. P.W.12 has stated that on 28.09.2008 at 8.10 pm when he was in the Government Hospital at Cuddalore, the deceased was brought to him for treatment. He found 70 to 75% of burn injuries on the deceased. He has further stated that he admitted the deceased as inpatient in the hospital and also gave intimation to the Police as well as the Judicial Magistrate.

12.P.W.13 has spoken about the post mortem conducted and his final opinion regarding the cause of the death of the deceased. P.W.14 has spoken about the fact that on 29.09.2008, the deceased was brought to the Government General Hospital at Puducherry where, he admitted the deceased in the hospital. P.W.15 has spoken about the photographs of the deceased taken by him. P.Ws.16, 17 & 19 have spoken about the registration of the case and investigation. P.W.18 has spoken about the fit state of mind of the deceased when P.W.11 recorded the dying declaration from the deceased.

13.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, Ms.Kalailakshmi, one of his daughter was examined as D.W.1 and Mr.Sarangabani, his cousin was examined as D.W.2 and Dr.Sevandhi was examined as D.W.3. Ex.D.1- a copy of Accident Register was marked on the side of the accused.

14.D.W.1 has deposed that her mother, the deceased in this case, had illicit intimacy with one Teacher, who is working in the local Panchayat School, where the deceased was also working. D.W.2 has spoken about the burn injuries found on the hand of the accused and he only admitted the accused to the Banrutty Government Hospital for treatment. D.W.3 is the Doctor who treated the accused when he was admitted in the said Hospital.

15.Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

17.There is no denial of the fact that the accused, deceased and their children including P.W.10 were residing together in the said house. On 28.09.2008 at about 5.00 pm, according to P.W.10, the accused poured kerosene on the body of the deceased

and set fire. The deceased, while in flames, ran out of the house and the neighbours extinguished the fire and thereafter, she was taken to the Hospital.

18. P.W.10 is the eye witness to the occurrence. Her presence cannot be doubted. Thus, we do not find any reason to reject the evidence of P.W.10. Apart from that, there are two dying declarations from the deceased. P.W.11, the then Judicial Magistrate No.1, Cuddalore had recorded Ex.P.7, the judicial dying declaration at 9.30 pm. Dr.Tamilarasan (P.W.18) had certified that the deceased was in a fit state of mind to make a dying declaration. In the said dying declaration, the deceased had told that the accused poured kerosene and set fire. There is no reason to reject the said judicial dying declaration. We find that the learned Judicial Magistrate had followed the procedure and has recorded that the deceased was in a fit state of mind to make dying declaration. There is no evidence even to infer that the deceased would have been tutored to make false statement against the accused.

19.P.W.16, the then Sub Inspector of Police, on receiving intimation, went to the Hospital and recorded the statement of the deceased. P.W.18, the Doctor who is present at that time has opined that the deceased was in a fit state of mind to make a statement. That is how he recorded Ex.P.1 statement and on returning to the police Station, he registered the case. This statement of the deceased itself is a dying declaration falling within the ambit of Section 32 of the Indian Evidence Act. We do not find any reason to reject this dying declaration. In this dying declaration, the deceased had told that there was a wordy quarrel between the accused and the deceased since the accused warned her to change her attitude and to stop her relationship with the paramour. It is further contended that the deceased told him to catch her red-handedly and to take any action whatever he wanted. This only infuriated the accused and he poured kerosene and set fire on the deceased. This dying declaration is in tune with the earlier judicial dying declaration recorded by the learned Judicial Magistrate.

20.Further, the accused had sustained burn injuries in the same occurrence. He had only taken the deceased to the hospital. This would further strengthen the case of the prosecution inasmuch as the presence of the accused at the place of occurrence also stands established.

21. Though it is stated that the kerosene can was recovered on the disclosure statement made by the accused, we find it difficult to attach any importance to the same as there is no connection especially between the can and the crime.

22. However, from the evidence of P.W.10, who is the daughter of the deceased and the accused and from the above two dying declarations, in our considered view, the prosecution has proved the case beyond reasonable doubt that it was this accused who poured kerosene and set fire on the deceased, which resulted in her death. Thus, it has been clearly established that this accused only caused death of the deceased.

23. The next question is what was the offence that the accused had committed by his act. From the dying declarations, it is crystal clear that there was no motive for the accused to cause the death of the deceased. After all they were living together along with the children under the common roof. The accused had developed suspicion about the chastity of the deceased. In the dying declaration recorded by P.W.16, the then Sub Inspector of Police, it is stated that there were frequent quarrels between the accused and the deceased in respect of the same. It is further stated in the dying declaration that on the day of occurrence, the accused warned her to change her attitude and to stop her relationship with the paramour. The deceased told him that he could take any action against her by catching her red handedly when she would be indulging in sex with her paramour. This, quite naturally would have provoked the accused. This provocation, in our considered view, was so grave and sudden. Driven by the said grave and sudden provocation, having lost his mental balance, the accused had taken the kerosene can which was lying there, poured kerosene and set fire to the deceased. After regaining his mental faculty, he himself had tried to extinguish the fire and sustained injury. He had only taken her to the hospital. The death was also not instantaneous. From these facts, we are of the view that the accused would not have intended to cause the death of the deceased at all. At the same time, it is crystal clear that the accused had intended to cause injuries found on the deceased, which were sufficient in the ordinary course of nature, to cause her death. Thus, the act of the accused would fall within the third limb of Section 300 I.P.C. The act of the accused would not amount to murder, but it is only a culpable homicide falling within the second limb of Section 299 I.P.C., and thus, the accused is liable to be punished for offence under Section 304 (i) I.P.C.

24. Now, turning to the quantum of punishment, at the time of occurrence, the accused was hardly 34 years old. He has to take care of his three children. He had no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation and there was no strong motive for the accused to cause the death of the deceased. Having regard to these aggravating as well as mitigating circumstances, we hold that

sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- shall be the appropriate punishment.

25.In the result, the criminal appeal is allowed in part and the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C., is set aside and instead, the appellant is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Judge, Mahila Court,
Cuddalore.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Judicial Magistrate,
Panruti.
- 4.The Chief Judicial Magistrate,
Cuddalore.(for Information)
- 5.The Superintendent,
Central Prison,
Cuddalore.
- 6.The Inspector of Police,
Muthandikuppam Police Station,
Cuddalore District.
- 7.The Judicial Magistrate, No.I,
Tiruchirappalli.

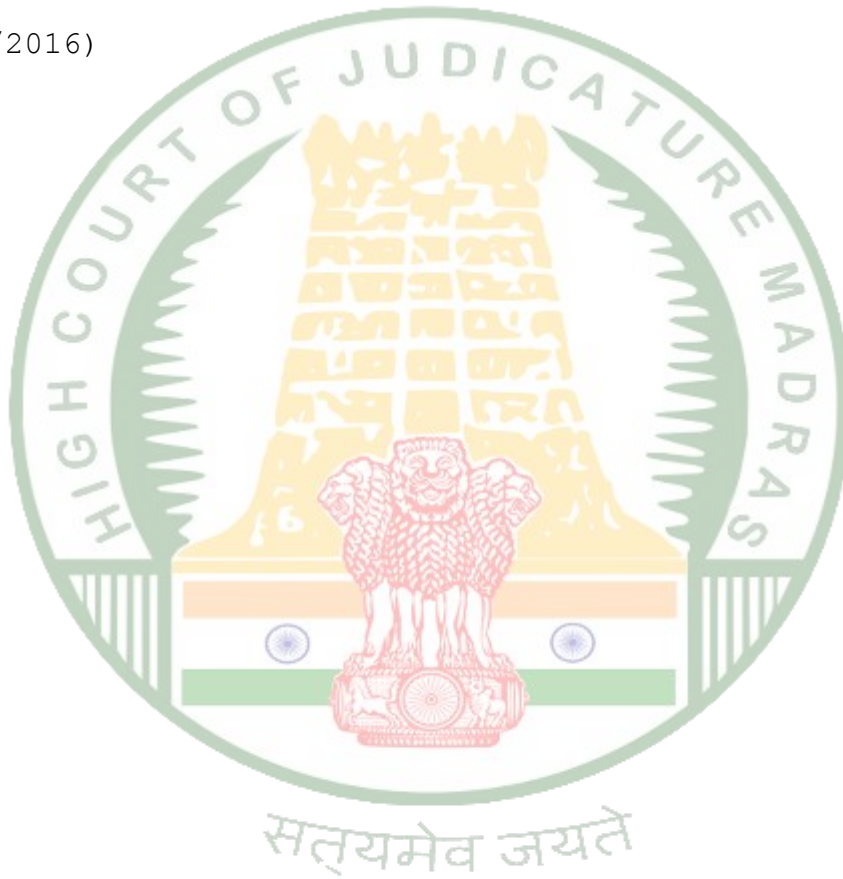
8.The District Collector,
Cuddalore.

9.The Director General Police,
Mylapore, Chennai.

+1cc to Mr.P.G.Thiyagu, Advocate Sr.10997

Crl.A.No.333 of 2012

ad(CO)
srg(09/03/2016)



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