

BAIL SLIP

The Appellant/Accused Viz., A. Ulaganathan, was directed to be released on bail as per Order dated 10.03.2016 made in CrI.M.P.No.2115 of 2016 in CrI.A.No.156 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2016

CORAM:

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

CrI.A.No.156 of 2016

A.Ulaganathan ... Appellant/Accused

Vs.

State, by
The Inspector of Police,
Mylam Police Station,
Tindivanam.
(Crime No.161 of 2013) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 07.01.2016 passed by the learned I Additional District and Sessions Judge, Tindivanam, in S.C.No.238 of 2013.

For Appellants : Mr.S.Anbalagan

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions Case No.238 of 2013, on the file of the learned I Additional District and Sessions Judge, Tindivanam. He stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	Sole Accused	U/s.294(b), 341, 498(A) and 302 IPC

2. The trial Court, by Judgment dated 07.01.2016, convicted the accused and sentenced him as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
Sole Accused	U/s. 302 IPC	Imprisonment for life and to pay a fine of Rs.2,500/-.
Sole Accused	U/s.294(B), 341, 498(A) IPC	Acquitted

Challenging the above said conviction and sentence, the appellant/ accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case one Sathiya was the wife of the accused. The marriage took place 12 years prior to the occurrence and out of the wedlock they have blessed with three children. Since the accused have illicit intimacy with one Suguna, there was a quarrel between the accused and the deceased. Feeling that the deceased is a hindrance to the accused, on 05.03.2013 at about 7.30 p.m., when the deceased was alone in her house, the accused came with kerosene and locked the door inside, poured kerosene on the deceased and set fire on her. D.W.1, who is the cousin of the deceased took the deceased to the Government Hospital, Mundiampakkam, where, she was referred to GIPMER Hospital, Pondicherry.

(ii) On receipt of the memo from the GIPMER Hospital, Pondicherry, P.W.1, Sub Inspector of Police, attached to the respondent police, proceeded to the hospital at about 1.30 a.m., on 06.03.2013 and recorded the statement of the deceased (Ex.P1). Based on the said statement of the deceased, P.W.1 registered a case in Crime No.163 of 2013 under Section 294 (b), 341, 506(ii) and 307 IPC and prepared first information report (Ex.P2), sent the first information report to the higher officials.

(iii) P.W.7, Inspector of Police, working in the respondent police, on receipt of the first information report, on 06.03.2013 commenced the investigation, proceeded to the scene of occurrence and prepared an observation mahazar (Ex.P3) drew a rough sketch (Ex.P12) in the presence of witnesses. Then, he proceeded to the GIPMER Hospital, Pondicherry and recorded the statement of the deceased. He sent a memo to the learned Judicial Magistrate No.I, Pondicherry for recording dying declaration of the deceased. On the same day at about 11.00 a.m., P.W.7 arrested the accused and on such arrest, he voluntarily gave confession and based on the disclosure statement (Ex.P5), P.W.7, seized M.O.4, Kerosene Tin in the presence of witnesses and then he sent the accused to judicial custody.

(iv) On receipt of the memo from the respondent police, P.W.5, the learned Judicial Magistrate No.I, Pondicherry, on 06.03.2013, at about 9.40 a.m., reached the GIPMER Hospital and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, he recorded the dying declaration of the deceased, at that time the deceased told that her husband took the kerosene from the stove in a stainless steel vessel and poured it and set fire on her the dying declaration was marked as Ex.P9.

(v) On 10.03.2013, the deceased succumbed to the injuries and hence P.W.7 altered the Section into one under Section 302 IPC and alteration report (Ex.P14). On 11.03.2013 at about 10.30 a.m., P.W.7 conducted inquest over the dead body in the presence of panchayatdars in the hospital and prepared inquest report Ex.P15. He sent the dead body for postmortem with requisition letter through Head Constable attached to the respondent police.

(vi) P.W.14 was working as Assistant Professor, Forensic Department, GIPMER Hospital, Pondicherry. He conducted postmortem autopsy on the dead body of the deceased on 11.03.2013 at about 3.00 p.m., and found the following injuries:-

Injuries:

- (a) Mixed pattern(both superficial and deep) of burns, involving following body parts.
- (b) Front of chest except axillary region on right side.
- (c) Back of chest except upper one third and adjacent neck area.
- (d) Back of abdomen and buttock region sparing lower one third of the back of the abdomen.
- (e) Front, back and inner aspect of right arm. Front and inner aspect of upper one third of right forearm and front and outer aspect of lower two third of right forearm. Front and inner aspect of left arm and forearm.
- (f) Front and back of both thighs and back of right leg. Soles of both legs - spared.
- (g) A surgically sutured wound (venesection) of 5 cm length present over inner aspect of lower one third of right arm. Area of skin involved by burns was 63%. All of the above mentioned burn wounds were covered with multiple greenish pus points on the base of wounds and variable degrees of granulation tissue developed along with the margins of wounds.

Internal Examination: Head : Skull intact, meninges congested. Brain congested and oedematous. Trachea congested. In thorax Bronchi Glucosa congested, Both lungs congested and oedematous. In abdomen Mucous membrane is congested it contains 200 ml of greyish white coloured watery fluid with partly digested food particles with no peculiar smell. Kidney congested.

She was of the opinion that the deceased appeared to have died of septicaemic burn injuries. She has given Postmortem Certificate (Ex.P8).

(vii) In the mean time, P.W.7 was transferred and he handed over the investigation to P.W.8, his successor. P.W.8, then Inspector of Police, working in the respondent police, continued the investigation, examined the Doctor, who conducted postmortem and recorded her statement and after completion of investigation, he laid the charge sheet before the respondent police.

4. Based on the above materials, the Trial Court framed charges as detailed above, but the accused denied the same as false. In order to prove the case of prosecution, as many as 8 witnesses were examined, 15 documents were exhibited and 4 material objects was marked.

5. Out of the above witnesses examined, P.W.1 was the Sub Inspector Police attached to the respondent police. According to him, he recorded the statement of the deceased in the GIPMER Hospital and based on the statement registered a case in Crime No.161 of 2013. P.W.2 was the Village Administrative Officer, Nedimozhiyanur Village, according to him, he is the witness to the observation mahazar, rough sketch, arrest of the accused and recovery of material objects. P.W.3 was the Head Constable attached to the respondent police. According to him, he identified the dead body for postmortem and after completing the postmortem, he handed over the dead body to the relatives of the deceased. P.W.4-Assistant Professor, who conducted postmortem on the dead body of the deceased and issued post mortem certificate. P.W.5, the learned Judicial Magistrate No.I, Pondicherry, recorded the dying declaration of the deceased. P.W.6 was the Doctor working in the GIPMER Hospital. According to him, he certified that the deceased was conscious and in a fit state of mind to give dying declaration and he gave certificate Ex.P9. P.W.7-Inspector of Police, on receipt of the first information report, conducted investigation, arrested the accused and recovered the material objects and then he handed over the investigation to P.W.8, his successor. P.W.8, Inspector of Police, attached to the respondent police, after completion of investigation, laid the charge sheet.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence were total denial. He examined two witnesses viz. D.W.1, the cushion and D.W.2, the mother of the accused and no document was marked on his side.

7. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

8. We have heard Mr.S.Anbalagan, learned counsel appearing for the appellants and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. It is a case of circumstantial evidence. The prosecution mainly relied upon the dying declaration given by the deceased. There are two dying declarations in this case. The first dying declaration given by the deceased before P.W.1, Sub Inspector of Police in the GIPMER Hospital, Pondicherry. Wherein, the deceased has stated that on 05.03.2013 at about 7.40 p.m., while she was taking dinner, the accused came inside the house and locked the door inside, took the kerosene which was available in the Tin and poured it on her and set fire on her. When she tried to escape, the accused prevented her and she dashed against him. The accused scolded her with filthy language and pushed her down, open the door and ran away. Then, she came out of the house, at that time, D.W.1, namely, Devaraj and others took her to the Government Hospital, Mundiampakkam. She has given statement at about 11.10 p.m., on 05.03.2013. Subsequently, on 06.03.2013 at about 9.25 a.m., the deceased has given judicial dying declaration before the learned Judicial Magistrate, No.I, Pondicherry. At that time, the deceased told the learned Judicial Magistrate that at about 8.00 p.m., she was taking dinner, the accused came inside the house, the deceased questioned him about the ration card, the accused took the kerosene from the stove and poured it in a stainless steel vessel, then poured kerosene on her and set fire on. She further stated that the deceased does not know, who admitted her in the Hospital. Hence, we find some material contradiction in the two dying declaration given by the deceased. The first dying declaration given before the P.W.1, the deceased has categorically stated that at about 7.30 p.m, while she was taking dinner, the accused came inside the house and locked the door inside, then he took the Tin containing kerosene and poured it and set fire on her then D.W.1 and others took her to the Hospital. But, the Judicial dying declaration, the deceased simply stated that when she was questioned the deceased about the ration card, the accused took kerosene from the stove in a stainless steel vessel and poured it on her and set fire on her, but she does not know who admitted her in the hospital. Apart from that the prosecution did not examine the Doctor, who admitted the deceased in the Government Hospital, Mundiampakkam and the Accident Register issued by the Doctor was also not marked by the prosecution. The first dying declaration given by the deceased before the Doctor was not produced by the prosecution.

10. The yet another important circumstance is that the accused has examined two witnesses as D.Ws.1 and 2 on his side. D.W.1, who is the cushion of the deceased. According to

him, at the time of occurrence, the accused and D.W.1 were talking together in the front of his house. At that time, the deceased came out of the house with burns, immediately both the accused and D.W.1 douse the fire by putting bed sheet on her. He further stated that he took the deceased to the Government Hospital, Mundiampakkam and the deceased followed them after borrowing money for the medical expenses. D.W.2, who is the mother of the deceased. According to her, when she met the deceased in GIPMER Hospital, Pondicherry, where, the deceased told her that due to depression, she herself poured kerosene and set fire on her. Hence, D.Ws.1 and 2 were closely related to the deceased, one is being a cushion and other one is mother and their evidence creates serious doubt of the dying declaration of the deceased. Even though, the dying declaration can be made a sole basis to convict the accused but, the dying declaration should be voluntary, genuine and consistent. In the instant case, there is a lot of material contradiction in the dying declaration given by the deceased. Apart from that considering the testimony of D.Ws.1 and 2, it is also creates a doubt regarding the genuineness of the dying declaration given by the deceased. In the said circumstances, we are of the considered view that it is highly unsafe to convict the accused based on the dying declaration of the deceased in the absence of any other corroborating witnesses. Hence, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt unerringly pointing the guilt of the accused.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant in S.C.No.238 of 2013 dated 07.01.2016 on the file of the learned I Additional District and Sessions Judge, Tindivanam is set aside and the appellant/accused is acquitted of all the charges levelled against him and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,
Tindivanam.

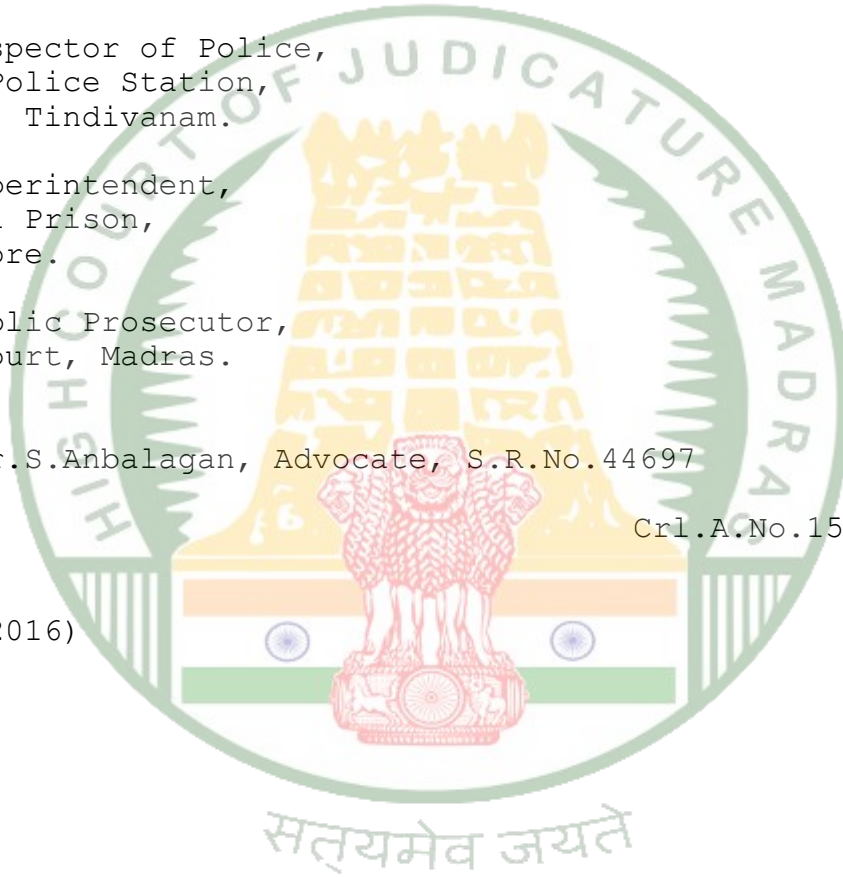
2. Do Through the Principal Sessions Judge,
Villupuram.

3. The Chief Judicial Magistrate No.II,
Tindivanam.
4. The Chief Judicial Magistrate,
Villupuram.
5. The District Collector,
Villupuram.
6. The Deputy General of Police,
Chennai 04.
7. The Inspector of Police,
Mylam Police Station,
Maylam, Tindivanam.
8. The Superintendent,
Central Prison,
Cuddalore.
9. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Anbalagan, Advocate, S.R.No.44697

Crl.A.No.156 of 2016

UGI (CO)
CA(28/12/2016)



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