

Bail Slip

The Appellants herein namely Mary and Ashok Accused 1 & 2 in S.C.No.225 of 2011 on the file of IV Additional Sessions Court, Chennai were directed to be released on bail as per order of this Court dated 16.4.2013 and made in M.P.No.1 of 2013 in Crl.A.No.214/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.03.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CRL.A.No.214/2013

1. Mary
2. Ashok

.. Appellants/Accused

Vs

State by
The Inspector of Police,
P.5 M.K.B. Nagar Police Station,
Chennai.

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction dated 04.11.2011 made in S.C.No.225 of 2011 on the file of the learned IV Additional Sessions Judge, City Civil Court, Chennai.

For Appellants : Mr.K.Kannan

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

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.225 of 2011 on the file of the learned IV Additional Sessions Judge, City Civil Court, Chennai. They stood charged for an offence under Section 302 read with 34 of IPC. By judgment dated 04.11.2011, the trial court convicted them under Section 302 read with 34 of IPC and sentenced them to undergo imprisonment for life and to pay

a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for 3 months. Challenging the said conviction and sentence, the appellants/accused are before this Court with this appeal.

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

(2.1) The deceased in this case was one Mrs.Sasi. P.W.1 is her sister. Sasi was already married to one Mr.Sekar. She had three children born through Sekar. In course of time, there arose misunderstanding between Sekar and Sasi and therefore, they got separated. The 2nd accused, thereafter, developed illicit intimacy with Sasi. The 2nd accused was already married to the 1st accused Mary. These two accused were residing in their native place.

(2.2) While so, the 2nd accused had rented a small hut belonging to P.W.3 where the 2nd accused and the deceased were living together as husband and wife at No.84-E, Erikkarai Moorthingar Street, Vyasarpadi, Chennai. The 1st accused used to come to the house of the deceased and quarrel with her alleging that the deceased had illegally taken the 2nd accused as her husband. This is stated to be the motive for the occurrence.

(2.3) On 19.08.2007 at about 09.00 a.m., these two accused were in the house of the deceased. There arose a quarrel between all the three. It is stated that in the said quarrel, the 1st accused poured kerosene on the deceased and the 2nd accused set fire by lighting a match stick. The deceased sustained extensive burn injuries all over her body. The neighbours, on hearing about the occurrence, informed P.W.1 about the same. P.W.1 immediately rushed to the house of the deceased. She found that the deceased had sustained extensive burn injuries. Thereafter, P.W.1 took the deceased immediately to the hospital.

(2.4) P.W.6 Doctor Jayaraman examined the deceased at 10.30 a.m. on 19.08.2007 at Kilpauk Medical College Hospital. At that time, the deceased told that one Mary, the first wife of her husband poured kerosene and her husband set fire. At that time, the deceased was conscious. According to P.W.6, the deceased had suffered 65% of burn injuries. He admitted her as inpatient and gave treatment. He also gave intimation to the police as well as to the jurisdictional Magistrate.

(2.5) P.W.10 Vanitha Devi, the then Sub-Inspector of Police, M.K.B.Nagar Police Station, on receiving the said intimation at 11.00 a.m. went to the hospital. One Dr.Jayakumar was attending on the deceased. He opined that the deceased was in a conscious state. P.W.10 recorded the statement of the deceased and on returning to the police station, she registered a case in Cr.No.466 of 2007 at 1.00 a.m. on 19.08.2007 against both the accused. Ex.P.10 is the First Information Report. She

forwarded Ex.P.1 complaint and Ex.P.10 F.I.R. to the court which were received by the jurisdictional Magistrate at 6.10 p.m. on 19.08.2007. The investigation was taken up by P.W.12.

(2.6) At about 01.00 p.m., P.W.12 went to S.M.Nagar and J.J.Nagar junction where he found both the accused. He arrested both the accused in the presence of P.W.2 and another witness. On such arrest, the accused gave independent voluntary confession. In pursuance of the same, the 2nd accused took the police and the witnesses to the house of the deceased and produced a match box and a burnt match stick. He recovered the same under a Mahazar. Apart from that, from the place of occurrence, he recovered a Kerosene Pump Stove and a Blue Colour Plastic Mug under a Mahazar. He prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of the same witnesses.

(2.7) P.W.11, the learned XV Metropolitan Magistrate, George Town, Chennai, on receipt of the intimation from the hospital, went to the hospital at 10.45 p.m. on 19.08.2007. One Dr.Jayakumar, P.W.6 was attending on her. He gave opinion that the deceased was in a conscious state. P.W.11, from and out of the answers elicited for the queries made by him and from the opinion of the Doctor, was satisfied that the deceased was in a fit state of mind to make a dying declaration. Then, he recorded the dying declaration of the deceased. Ex.P.12 is the dying declaration.

(2.8) On 20.08.2007, P.W.12 went to the hospital and recorded the statement of the deceased. At that time, she was conscious. In her statement she told that she poured kerosene to herself and set fire. She further told that the accused 1 and 2 did not cause any harm to her at all. She also told that on earlier three occasions, she made statements that these two accused poured kerosene and set fire with a view to get them locked in the case. She further said that since her conscience pricked, she came out with the truth. P.W.12 examined few more persons and recorded their statements. The deceased succumbed to the injuries on 22.08.2007 at 9.40 a.m.

(2.9) On getting information from the hospital, P.W.12 altered the case into one under Section 302 of IPC. He held inquest on the body of the deceased and forwarded the same for postmortem. P.W.8 conducted postmortem on the body of the deceased on 22.08.2007 at 03.15 p.m. Ex.P.8 is the Postmortem Certificate. He gave opinion that the death was due to the burn injuries. On completing the investigation, P.W.12 laid charge sheet against both the accused.

3. Based on the above materials, the Trial Court framed a lone charge 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 12 witnesses were examined and 17 documents and M.O.1 series were also marked.

4. Out of the said witnesses, P.W.1 is the sister of the deceased. She has stated about the relationship between the 2nd accused and the deceased. She has further stated that there were frequent quarrels between these two accused on the one side and the deceased on the other side. She has also stated that on the day of occurrence, on hearing about the occurrence, when she went to the house of the deceased, she was found fully with burn injuries and she made a statement that these two accused were responsible for the said burn injuries. P.W.2 has turned hostile. He has not supported the case of the prosecution in any manner. P.W.3 is the land lord of the 2nd accused where the 2nd accused and the deceased were living. He has not stated anything incriminating. P.W.5 is the husband of the deceased. He has stated about the fact that the deceased has deserted him and started living with the 2nd accused. P.W.6 Doctor has spoken about the fact that he examined the deceased at 10.30 a.m. on 19.08.2007 at the Kilpauk Medical College Hospital. The deceased told him that the 1st accused poured kerosene and the 2nd accused set fire. P.W.7 is a Police Constable, who carried the body for postmortem. P.W.8 Doctor has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.9 Doctor has spoken about the treatment given to the deceased. P.W.10 has spoken about the statement recorded from the deceased upon which the case was registered by her. P.W.11 has spoken about the judicial dying declaration recorded by him. P.W.12 has spoken about the investigation done and the final report filed by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false and they pleaded innocence. However, they did not choose to examine any witness nor mark any document on their side.

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

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

8. Of course, at the earliest point of time, when the deceased was taken to the hospital and subsequently, when P.W.10 recorded the complaint from the deceased and also when the learned Judicial Magistrate recorded the dying declaration, the deceased told that the 1st accused poured kerosene and the 2nd accused set fire. Though minor discrepancies were found in these three dying declarations, in general, they are in same line. But subsequent

to these three dying declarations, on 20.08.2007, the Inspector of Police had gone to the hospital and after having ascertained that the deceased was in a conscious state, he recorded her statement. P.W.12 was cross-examined extensively about the said statement. In that statement, the deceased had told that she herself poured kerosene and set fire to herself. In respect of the earlier three dying declarations she has offered an explanation that due to her animosity against these two accused with a view to lock them in the case, she made such a false allegation against them. She has further stated that since her conscience pricked, she came out with the true version of the occurrence. P.W.12 has categorically stated about the same in his evidence. The prosecution has got no explanation in respect of the said evidence of P.W.12. Thus, the last dying declaration of the deceased is quite contrary to the earlier dying declarations. In the absence of any explanation by the prosecution as to why this last dying declaration made to P.W.12 should be rejected, we are bound to give the benefit of the same to the accused and acquit them. In such view of the matter, we are of the considered view that the prosecution has not proved the guilt of the accused beyond all reasonable doubts and they are entitled for acquittal.

9. In the result, the appeal is allowed and the conviction and the sentence made by the trial court on the appellants are set aside and they are acquitted of the lone charge levelled against them. The bail bonds, if any, executed by them, shall stand discharged. The fine amount, if any, paid, shall be refunded to the respective accused.

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

1. The IV Additional Sessions Judge
Chennai

2. The X Metropolitan Magistrate
Egmore, Chennai

3. The Chief Metropolitan Magistrate
Egmore

4. The Inspector of Police,
P.5 M.K.B. Nagar Police Station,
Chennai.

5. The Superintendent
Central Prison for women
Puzhal, Chennai

6. The Superintendent
Central Prison
Puzhal, Chennai

7. The District Collector
Chennai

8. The Director General of Police
Mylapore, Chennai-4

Crl.A.No.214/2013

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