

Bail Slip

The Appellant Name Durairaj/Accused namely was released on bail as per order of this Court dated 19/3/2013 and made in M.P.No.1 of 2013 in Crl A No.142 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.142/2013

Durairaj ... Appellant/sole accused

Vs

State by
The Inspector of Police,
J.6 Thuraipakkam Police Station,
Chennai-600 096. ... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu, dated 09.04.2010, made in S.C.No.245 of 2006.

For Appellant : Mr.P.Bakiyaraj,
Legal Aid Counsel

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.245 of 2006 on the file of the learned Principal Sessions Judge, Kancheepuram at Chengalpat District. He stood charged for offence under Section 302 of IPC. By judgment dated 09.04.2010, the trial court convicted him under Section 302 of I.P.C. and sentenced

him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo, rigorous imprisonment for 6 months. 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 Parimala. The accused is her husband. P.Ws.1 and 2 are their children. They were all residing together at Kandan Chavadi Village. The accused is a drunkard. He used to return to the house in drunken stage and demand money from the deceased. Whenever the deceased wanted the accused to earn and give some money for the maintenance of the family, the accused used to quarrel with her also. It is alleged that on 28.07.2005 at about 08.00 p.m., the deceased and P.Ws.1 to 3 were in their house. At that time, when the accused came to the house, the deceased told him that he had not paid any amount to her to pay even the school fees. This resulted in a quarrel. The accused had beaten the children. The deceased intercepted.

(b) In the said quarrel, it is alleged that the accused poured kerosene from a one litre bottle container and with a lighted match stick, set fire on her. This was witnessed by P.Ws.1 and 2. When the deceased was in flames, the accused ran away from the scene of occurrence. The deceased cried for help. The neighbours rushed to the house of the deceased and extinguished the fire. The deceased was, thereafter, taken to the Royapettah Government Hospital. P.W.9 examined the deceased on 28.07.2005 at 08.30 p.m. She had been brought by one Mohanasundaram, a neighbour. The deceased told P.W.9 that while she was cooking, the kerosene stove burst and in the said process, she caught fire and sustained injuries. P.W.9 admitted her as inpatient. He found the extensive burn injuries all over the body of the deceased. Ex.P.7 is the Accident Register. He gave intimation to the police as well as to the Metropolitan Magistrate.

(c) On receiving the intimation from the hospital, P.W.12 rushed to the Royapettah Government Hospital. At that time, the deceased was conscious. She recorded the statement of the deceased and on returning to the police station, she registered a case in Crime No.799 of 2005 under Section 307 of I.P.C. against the accused. In the said statement, the deceased had narrated that it was this accused, who poured kerosene and set fire on her. Ex.P.11 is the statement of the deceased and Ex.P.12 is the First Information Report. She forwarded both the documents to court and also gave intimation to the learned Metropolitan Magistrate for recording dying declaration.

(d) P.W.10, on receiving the said intimation, rushed to the hospital at 01.45 p.m. He found the deceased in the conscious state. One Dr.Saravanan, who was attending on the deceased, gave a certificate that the deceased was conscious. The learned Magistrate made an assessment of the mental state of the deceased and found that she was in a fit state of mind to make a dying declaration. Then, he recorded the dying declaration of the deceased at 02.10 p.m. Ex.P.8 is the said dying declaration.

(e) The case was taken up for investigation by P.W.12. She proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. She examined P.Ws.1 and 2 and few more witnesses and recorded their statements. The investigation was, thereafter, taken by P.W.13, the then Inspector of Police.

(f) On 29.08.2005 at 09.40 a.m., he arrested the accused near Kandan Chavadi Bus Stop in the presence of P.W.7 and another witness. On such arrest, he disclosed the place where he had thrown a Plastic Can and a Match Box. In pursuance of the same, he took the police and the witnesses to his house and produced M.Os.1 and 2. P.W.13 recovered the same under a Mahazar. Then, he forwarded the accused to court for judicial remand and handed over the material objects to court.

(g) On 10.09.2005 at 06.30 a.m., the deceased, who was undergoing treatment in the Royapettah Government Hospital, succumbed to the injuries. On receiving intimation regarding the same, P.W.13, altered the case into one under Section 302 of I.P.C. and submitted an Alternative Report under Ex.P.16 to the court. On the same day between 09.15 a.m. and 11.00 a.m., he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(h) P.W.4 Dr.Mathiharan conducted autopsy on the body of the deceased on 10.09.2005 at 01.00 p.m. He found the following injuries :

'Moderately nourished body of a female.

1) Partly healed. Infected burns seen over both sides of Neck, both sides of chest unclenching both breasts, upper part of abdomen and lower part of left abdomen, front and back of entire upper limb, inner aspect and front of upper part of left arm and front of left forearm, right gluteal area and outer aspect of upper part of Right thigh, and front of upper point of both thighs. The involved areas are covered with foul smelling greenish yellow pus,

2) Bed-sore seen over sacral area 10 x 8 cms.

On dissection : Scalp appear normal. Cranial vault and mesuriges intact. Brain c/s congested neck structures,

Hyoid Bone and thoracic case intact;
Heart normal in size. Chambers contained fluid blood.
Lungs congested c/s exudes frothy fluid.
Stomach contained 200ml of brown colour fluid. No specific smell felt. Mucosa Normal. Liver and spleen: C/s congested.
Kidneys - Capsule partly adherent. C/s congested
intestines distended with gas
Bladder empty
Uterus Empty.
Pelvis and spinal column intact.''

Ex.P.1 is the Postmortem Certificate. He gave opinion that the death was due to extensive burn injuries.

(i) On completing the investigation, P.W.13 laid charge sheet against 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 13 witnesses were examined and 17 documents and 2 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 are the eye-witnesses to the occurrence. They are the children of the accused and the deceased. They have vividly spoken about the entire occurrence. P.W.4 is the father of the deceased. He has stated about the frequent quarrels between the accused and the deceased. He has further stated that he came to the hospital on hearing about the occurrence and at that time, the deceased was not in a position to speak. P.W.4 Dr.Mathiharan has spoken about the autopsy conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.5 has spoken about the hearsay occurrence. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 is the brother of the deceased. He has also spoken about the frequent quarrels between the accused and the deceased. P.W.8 has spoken about the recording of the statements under Section 164 of Cr.P.C. P.W.9 has spoken about the treatment given to the deceased. P.W.10 has spoken about the judicial dying declaration recorded by him. P.W.11 Doctor K.Saravanan has stated that he certified when the Magistrate was in the hospital to record the dying declaration that the deceased was conscious. P.W.12 has spoken about the recording of the statement of the deceased and the case registered by her and also the initial investigation done by her. P.W.13 has spoken about the investigation done and the filing of the final report by him.

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 the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

7. When this case came up for final hearing before this Court, there was no representation continuously for the appellant. Therefore, this Court appointed Mr.P.Bakiyaraj, the learned Counsel as a Legal Aid Counsel by an order dated 28.03.2016.

8. 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.

9. In this case, the prosecution relies mainly on the eye-witness account of P.Ws.1 and 2, who are the children of the deceased and the accused. The alleged occurrence had taken place at 08.00 p.m. on 28.07.2005 at the house of the deceased. Therefore, the presence of P.Ws.1 and 2 could not be doubted. They have stated that the accused came to the house at drunken state and there was a quarrel between the accused and the deceased and in that quarrel, the accused poured kerosene on the body of the deceased and set fire.

10. But the learned Counsel for the appellant would submit that these two witnesses are child witnesses and therefore, their evidences should be rejected. He would further submit that there are also contradictions in their evidences.

11. It is true, of course, there are some contradictions in the evidence of P.W.1 and P.W.2, which in our considered view, are very minor in nature and they do not in any manner affect the case of the prosecution. P.Ws.1 and 2 have stated very cogently about the material particulars that it was, this accused, who poured kerosene and set fire on the deceased. It is true that there are some discrepancies as to whether Kerosene was taken from a Can or from a bottle and whether fire was set by means of a lighted match stick or by means of a lighted stick. Because P.Ws.1 and 2 are child witnesses, these kinds of minor discrepancies are quite natural. Therefore, on that score, we cannot reject the evidence of P.W.1 and P.W.2. Therefore, we have inclined to accept the evidence of P.Ws.1 and 2.

12. After the occurrence, the deceased was taken to Royapettah Government Hospital at 08.30 p.m. At that time, to the Doctor, the deceased told that while cooking, the stove burst and in the said process, she caught fire and sustained injuries. Making much reliance on this statement made by the deceased, the learned Counsel for the appellant submitted that this being the earliest statement of the deceased, it should be given weightage.

13. In normal course, the dying declaration which is at the earliest point of time is free from any tutoring and it would, quite naturally, contain the truth. But, in this case, subsequently, the Sub-Inspector of Police went to the hospital where she had recorded the dying declaration wherein the deceased had told her that it was this accused who poured kerosene and set fire on her. Thereafter, the learned Metropolitan Magistrate had gone to the hospital and recorded the dying declaration of the deceased. In that also, the deceased told that it was this accused, who poured kerosene and set fire. From these two dying declarations, it is clearly established that it was this accused who poured kerosene and set fire on the deceased. In the earliest dying declaration made to the Doctor, in our considered view, going by the natural human behaviour, the deceased would have made such a statement to save her husband. Therefore, we do not attach much importance to the said statement made by the deceased to the Doctor. When the judicial dying declaration was recorded, the deceased was fully conscious and she was in a fit state of mind. The learned Metropolitan Magistrate had assessed the mental fitness of the deceased and after the satisfaction of his judicial conscience, then only, he recorded the dying declaration and that judicial dying declaration carries solemnity besides acceptance. These two dying declarations duly corroborate the eye-witness account of P.Ws.1 and 2. Thus, from these evidences, in our considered view, the prosecution has clearly proved that it was this accused who poured kerosene and set fire on the deceased which resulted in her death.

14. Now the question is as to what was the offence the accused had committed by the said act. It is in the dying declaration that at the time of occurrence, the accused came to the house in a drunken state. The deceased wanted money from him to pay the school fees. This resulted in a quarrel between them. It is also in the dying declaration that in the said quarrel, the accused started beating the children. The deceased intercepted and scolded the accused. This infuriated the accused to take kerosene which was lying by then and set fire. From the narration of these facts, it is crystal clear that the accused had acted out of provocation made by the deceased in the

quarrel. The provocation, in our considered view, is also sudden.

15. In such view of the matter, we hold that the act of the accused would squarely fall within the third limb of Section 300 of IPC and also the first exception to Section 300 of IPC. Therefore, the appellant is liable to be punished for the offence under Section 304-II of IPC.

16. Now coming to the quantum of punishment, the accused was aged about 41 years at the time of occurrence. He has got no bad antecedents. Having regard to all the above and also the fact that the occurrence was not a premeditated one, we are of the view that sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

17. In the result, the appeal is partly allowed. The conviction and sentence imposed on the accused by the trial court for the offence under Section 302 of I.P.C. is set aside and instead, he is convicted under Section 304-II of IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks. It is directed that the period of detention already undergone by the accused shall be given set off under Section 428 of Cr.P.C. The trial court is directed to secure the accused to undergo the remaining period of sentence.

18. While parting with the case, we appreciate the services rendered by Mr.P.Bakiyaraj, the learned Counsel, who appeared on behalf of the appellant as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-

Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Alandur.

2.The Chief Judicial Magistrate,
Chengalpattu(For information).

3.The Principal Sessions Judge,
Kancheepuram District at Chengalpattu.

4.The Superintendent,
Central Prison, Puzhal,
Chennai-66.

5. The Inspector of Police,
J.6 Thuraipakkam Police Station,
Chennai-600 096.

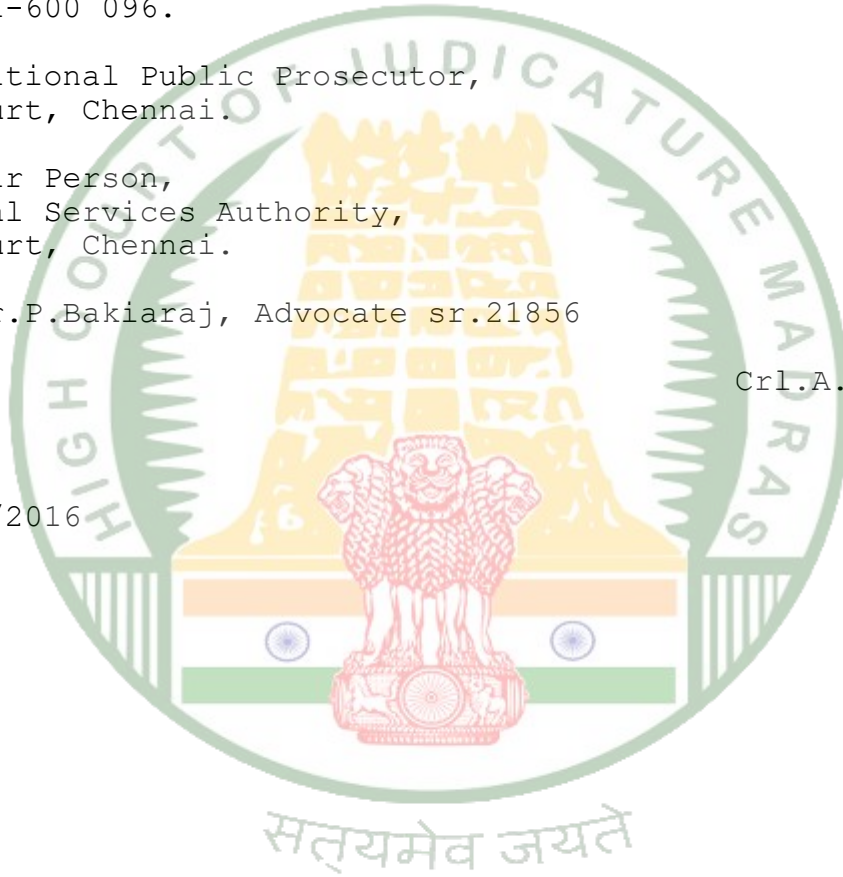
6.The Additional Public Prosecutor,
High Court, Chennai.

7.The Chair Person,
The Legal Services Authority,
High Court, Chennai.

+lcc to Mr.P.Bakiaraj, Advocate sr.21856

Crl.A.No.142/2013

vsn[col]
srg 25/04/2016



WEB COPY