

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.487/2016

Kattabomman @ Kasirajan

...Appellant/sole accused

Vs

State by
The Inspector of Police,
D.Nagar Police Station,
Puducherry
(Cr.No.134/2013)

...Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Puducherry in S.C.No.6 of 2014 dated 04.07.2015.

For Appellant : Mr.S. Chandrasekaran
(Legal Aid Counsel)

For Respondent : Mr.V. Balamurugane
Addl. Public Prosecutor (Pondy.)

JUDGMENT

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

The appellant is the sole accused in S.C.No.6 of 2014 on the file of the learned Principal Sessions Judge, Pondicherry. He stood charged for the offences under Sections 436, 302 and 307 IPC. By judgment dated 04.07.2015, the trial court convicted him under all the three charges and sentenced him as detailed below:

Penal provision(s) under which convicted	Sentence
Section 436 of IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for one year..
Section 302 of IPC	Imprisonment for life and to pay a fine of Rs.1000/-.
Section 307 IPC.	Rigorous Imprisonment for ten years and to pay a fine of Rs.1000/-, in default, to under simple imprisonment for one year.

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) P.W.1 is a resident of New Saram, Venkateswara Nagar, Chinnayampet Main Road, Puducherry. Mrs.Lakshmi (hereinafter referred to as "deceased") was the wife of P.W.1 and was residing with him. The accused is a close relative of P.W.1. There were money transactions between P.W.1 and the accused. The accused demanded repayment of the amount due from P.W.1. P.W.1 disputed the amount that was actually due from him. This landed in a complaint to the police. In the Police Station, the accused demanded Rs.2,70,000/-, whereas the matter was settled for a sum of Rs.12,000/-. The accused was not satisfied with the said settlement. He challenged that he would do away with P.W.1 and his family members. This is stated to be the motive for the occurrence.

(b) In the intervening night on 13.07.2013 and 14.07.2013 P.W.1 and the deceased were sleeping inside the house. Around 2.00 or 2.15 a.m on 14.07.2013, when P.W.1 and the deceased were sleeping inside the house, suddenly, there was a fire on the roof of the house. P.W.1 was woken up by the light. According to him, immediately, he rushed out of the house. Then with a view to save his wife he went inside the burning house, in the course of which, he sustained burn injuries. When he came out, according to him, he found the accused fleeing away from the scene of occurrence in a bicycle, after throwing petrol bottle near the place of occurrence. In the meanwhile the house was engulfed by fire and the deceased could not escape. On hearing

the alarm raised by P.W.1, neighbours came to the spot and the fire was extinguished. The deceased was rescued from fire. She had sustained extensive burn injuries.

(C) P.W.4 is an Auto driver, who was operating Auto in that area. On seeing the light from the house, he rushed to the house of P.W.1. While he was nearing the house of P.W.1, he found the accused fleeing away from the scene of occurrence in a bicycle. Then P.W.4 rushed to the house of P.W.1 and he took P.W.s 1 and 2 to the hospital for treatment. When P.W.1 and the deceased were admitted in the hospital, the deceased was not conscious, where P.W.1 told the doctor that his house was set fire by the enemies, by which, he and his wife sustained injuries. Then he gave complaint to P.W.12.

(d) On receipt of information, P.W.12, the then Inspector of Police, rushed to the hospital, recorded the statement of P.W.1 and on returning to the police station, he registered a case in Cr.No.134 of 2013 for the offence punishable under Secs.436 and 307 IPC.

(e) P.W.18 the Inspector of Police took up the case for investigation, went to the place of occurrence; prepared an Observation Mahazar and Rough sketch and recovered the burnt materials from the place of occurrence,. A plastic bottle, which was not burnt, was also recovered. Then he examined many witnesses including P.W.1.

(f) When P.W.1 and the deceased were in the hospital, the learned Judicial Magistrate (P.W.13) went to the hospital and recorded the dying declaration of the deceased and also the statements of P.W.1. In the said dying declaration, the deceased told that around 2.00 a.m, she found that there was fire on the roof of the house and that the accused had poured petrol and set fire to the house. P.W.1, in his statement stated that one Kasinathan, father of one Sirasi and Murugesan were found running away from the scene.

(g) P.W.18 continued the investigation and arrested the accused. On such arrest, while in custody, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden a petrol bottle, a match box, a wire bag and a bicycle. In pursuance of the same, he took the police to the place of hid out and produced the material objects. On returning to the Police Station, P.W.18 forwarded the accused to Court for judicial remand and handed over the Material Objects to Court. P.W.19, after completing the investigation, laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges 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 19 witnesses were examined and 21 documents and 8 material objects were also marked.

4. Out of the said witnesses, P.W.1, the husband of the deceased, an injured witness, has stated in his chief examination about the dispute regarding the loan transaction between him and the accused. He has further stated that on the intervening night of 13.07.2013 and 14.07.2013, he was sleeping with his wife. Around 2.00 or 2.15 a.m, he was awakened by fire on the roof of the house. When he ran out of the house, he found the accused fleeing away from the scene of occurrence after throwing a petrol bottle. He has further stated that he was taken by P.W.4 in the auto to the hospital. He has further stated that near his house, he found the father of Sirasi and Murugesan. He told P.W.4, who was the auto driver that the accused along with the father of Sirasi and Murugesan had set fire. Then he has spoken about the complaint made to the police.

5. P.W.2 is also an auto driver. According to him, around 3.00 a.m on 14.07.2013, he was in the auto stand. At that time, he found two people going in a motorcycle through the said auto stand. They told that there was fire accident. Immediately, he started rushing towards the place of occurrence in his auto. At that time, there was a person coming from the burning house and taking the bicycle. When P.W.2 went and asked him he told that he only had set fire. P.W.2 took P.W.1 and the deceased to the hospital.

6. P.W.3 has stated that he heard the occurrence later and he has not stated anything incriminating. P.W.4 is another auto driver. According to him, on 14.07.2013 around 2.30 a.m, one Sekar came to his house and woke him up. Sekar told him that the house of Pandian (P.W.1) was in flames. Immediately, he rushed to the place of occurrence. At that time, he found the accused fleeing away from the scene of occurrence. Then he, along with Sekar took the deceased and P.W.1 to the hospital.

7. P.W.5 is the brother-in-law of P.W.1. He has stated that on hearing about the occurrence, he went to the hospital and enquired about the same. P.W.6, a neighbour of P.W.1 has stated that around 2.00 a.m., on 14.07.2013, there was a commotion near the house of P.W.1. When he came out, he found the house of P.W.1 in flames. P.W.1 and his wife had sustained burn injuries and they were taken to hospital. P.W.7 has spoken about the preparation of observation mahazar, rough sketch and recovery of material objects.

8. P.W.8 was an employee in a local petrol bunk. He has stated that on 13.07.2013 around 6.00 p.m, one aged person purchased ½ ltr petrol. But he has not identified the accused in the court as the one who purchased petrol. P.W.9, Dr.Diwakar, has spoken about the Post Mortem conducted on the dead body of the deceased. He found the following injuries:

" External Examination: length, weight, condition of cloths, hair, P.M Charges, orifices, tongue, teeth, eyes, etc.:Well developed and moderately nourished adult female. Cornes clear. Finger nails bluish Rigour Moris present all over the body.Ht.150 cms.

8. EXTERNAL INJURIES (Ante-mortem)

1) Partly healed epidermal burns in patches over the back of chest, partly healed dermal burns over the right forearm a hand, lower abdomen, over the back of loins, buttocks and both lower limbs, found infected.

9. INTERNAL EXAMINATION:

Head (Scalp), skull brain, meninges and blood vessels:

Surface vessels congested and oedematours.

10. Neck structure (skin, muscles, hyoid, thyroid, cartilage, larynx, traches, bronchi, etc,)

Intact:Covered with forth.

11. THORAX

(a) Chest wall

(b) Pleural Cavity : Both empty

© Oesophages : ---

(d) Bronchi : ---

(e) Lungs -Right left: Both congested, oedematous and shows consolidation changes

(f) Heart and Pericardium: Contained dark coloured blood

(g) Blood vessel : ---

(h)Diaphragm : ---

12.ABDOMEN AND PELVIS

(a) Abdominal wall :Linear albicantes seen

- (b) Peritoneum : ---
(c) Stomach and contents: Contained dark-coffee coloured fluid.
Mucosa pale.
(d) Small intestine : -
(e) Large intestine : -
(f) Liver intestine : Yellowish with cirrhotic changes

(g) Spleen : --
(h) Pancreas : Pale
(i) Kidneys, Uraters and Adrenals :-
(j) Urinary bladder : Empty
(k) Genital organs : Uterus empty
13. Muscles and Bones: N.A.D
14. Spine : N.A.D
15. Viscera preserved for chemical analysis:
(a) Stomach and contents and one foot of small intestine and contents:
(b) Half kg of liver and one half of each kidney
(c) 50 ml of blood
(d) Sample of preservative used (Saturated solution of Sodium Chloride/Rectified spirit_

He has opined that the deceased died due to extensive burn injuries.

9. P.W.10 has spoken about the photographs taken at the place of occurrence, as requested by P.W.11., the investigating officer. P.W.11 stated that he heard about the occurrence, went to the place of occurrence and sent P.W.1 and the deceased to the hospital. P.W.12 has spoken about the registration of the case by him on the complaint of P.W.1. P.W.13, the learned Judicial Magistrate, has stated about the dying declaration recorded from the deceased on 14.07.2013 at 1.35 p.m and another statement recorded from P.W.1. Ex.P.12 is the dying declaration of the deceased and Ex.P.13 is the statement of P.W.1.

10. P.W.14 has stated that he recorded the statement of P.W.1 which culminated in registration of the case. P.W.15 is the doctor, who treated P.W.1 at Indira Gandhi Government Hospital, Puducherry. According to him, he examined the deceased on 14.07.2013 at 3.30 a.m who was admitted as inpatient and treated for about a month. She was taken home against medical advice on 13.08.2013. He has further spoken about the treatment given to P.W.1. According to him, the deceased had sustained

extensive burn injuries and P.W.1 sustained burn injuries of 25%.

11. P.W.16 the Doctor, has stated that he examined the deceased and certified to the learned Judicial Magistrate that the deceased was conscious and was in a fit state of physical and mental condition to give a statement. Similarly P.W.17, the Doctor, certified to the learned Magistrate that P.W.1 was in a fit state of mind to give a statement. P.W.18 and P.W.19 have spoken about the investigation done and the final report filed.

12. 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 marked any document on his side. 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 with this appeal.

13. We have heard the learned Counsel, appointed as Legal Aid Counsel, for the appellant and the learned Additional Public

Prosecutor appearing for the Pondicherry State and we have also perused the records carefully.

14. This is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us go into the circumstances projected by the prosecution.

15. So far as the motive is concerned, the evidence of P.W.1 would go to show that there was some dispute between P.W.1 and the accused in respect of money transaction. To this extent, we can believe the evidence of P.W.1. Thus, it has been proved that there was ill-feeling between P.W.1 and the accused. From that, we cannot rush to the conclusion that the accused set fire to the house, which resulted in the death of the deceased and injuries to P.W.1. We have to examine as to whether the accused was the one who set fire to the house of P.W.1.

16. In order to prove this fact, the prosecution mainly

relies on the evidence of P.W.1 and P.W.4. P.W.1 has stated that when he rushed out of the house, the house was on fire. He found the accused running away from the scene of occurrence after throwing a petrol bottle. But in chief examination, he has further stated that when he was taken to hospital in an auto, he found two other persons by name father of Sirasi and Murugesan standing somewhere near his house. He told the auto driver that these two persons along with the accused had set fire to the house. There is no explanation as to why he made such a statement that three persons set fire to his house. Thereafter, when he was admitted in the hospital, he told the doctor that the house was set fire by his enemies, which means, the perpetrators were more than one. When he was examined by the learned Judicial Magistrate, again he gave the names of three persons as the persons who had set fire. According to him, those three persons are Kasinathan, the father of one Sirasi and one Murugesan. He has not offered any explanation as to why he made contradictory statement to the learned Magistrate when his statement was recorded. In the First Information Report, however, he has stated that the accused alone had set fire. In view of these contradictory statements made by P.W.1 at various stages, we find it difficult to believe the evidence of P.W.1. When he was inside the house, the house was in flames and when he came out of the house with injuries, it is difficult to believe that he could have noticed anyone. Assuming that he was in a position to notice anybody, unless it is explained to Court as to why he made such contradictory statements at various stages, it is difficult to believe him.

17. Then the prosecution relies on the evidence of P.W.4 who is an auto driver. He has stated that when he was sleeping in his house one Sekar another auto driver came to his house, woke him up and told him that the house of P.W.1 was on fire. Thereafter, he along with Sekar went to the place of occurrence and he has stated that at that time, he saw the accused fleeing away from the house, This is highly unbelievable. Sekar has not been examined. It is difficult to believe that Sekar came to his house, woke him up and then these two were rushing to the house and until then, the perpetrator of the crime would have been moving slowly to be seen by these two. Apart from the above all, P.W.6, a neighbour of P.W.1 has stated that around 2.00 a.m, he was awakened by fire on the roof of the house of P.W.1. When he came out, he found P.W.1 and the deceased with burn injuries. He had not at all seen the accused anywhere. The evidence of P.W.6 assumes importance and if the evidence of P.W.6 is to be believed, then the evidence of P.W.1 and P.W.4 could not be believed. Thus, absolutely, there is no evidence to hold that the accused was responsible for the occurrence.

18. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived of only by following the procedure established by law. The said procedure denotes a fair procedure where the guilt of the accused should be established beyond reasonable doubts. In other words, the Court cannot afford to convict an individual on mere surmise or suspicion. In the instant case, though the prosecution has succeeded in establishing a strong suspicion against the accused, such suspicion cannot take the place of proof. Thus, we hold that absolutely there is no evidence to hold the accused guilty. We hold that the prosecution has failed to prove the case against the appellant/accused beyond reasonable doubts and therefore the appellant accused is entitled for acquittal.

19. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Puducherry in S.C.No.6 of 2014 dated 04.07.2015 are set aside and he is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

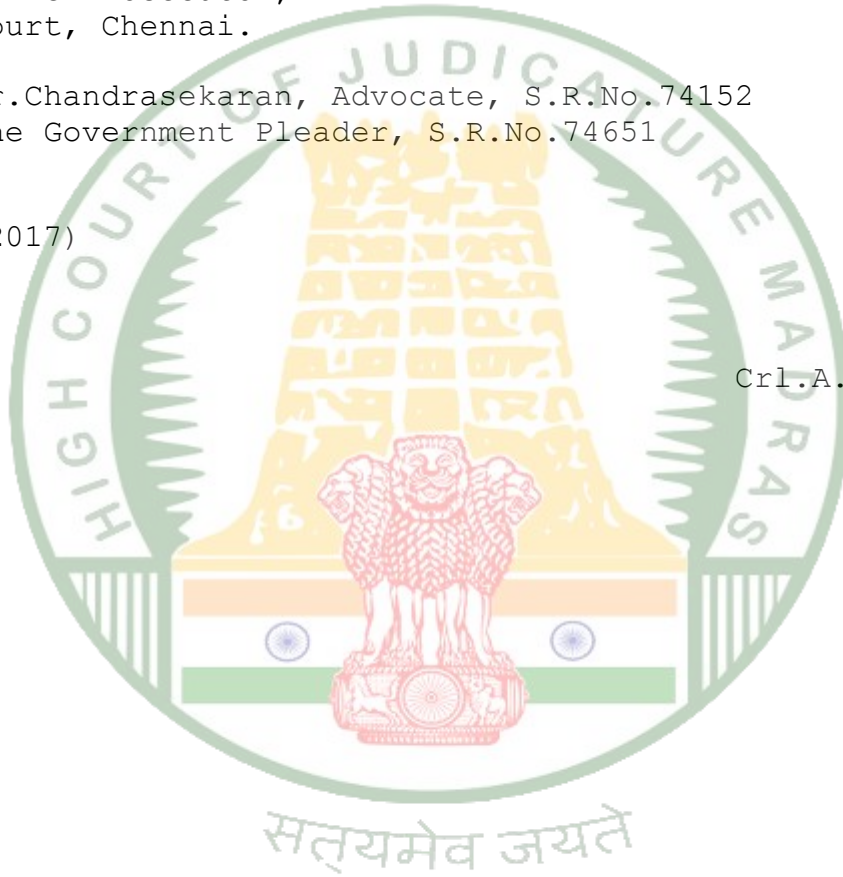
To

1. The Judicial Magistrate,
No II, Puducherry.
2. -do- Thro the Chief Judicial Magistrate,
Puducherry.
3. The Principal Sessions Judge,
Puducherry.
4. The Inspector of Police,
D.Nagar Police Station,
Puducherry

5. The Superintendent,
Central Prison,
Puducherry.
6. The District Collector,
Puducherry.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.Chandrasekaran, Advocate, S.R.No.74152
+1cc to the Government Pleader, S.R.No.74651

KJ(CO)
RS(06/02/2017)



Judgment in
Crl.A.No.487/2016

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