

Bail Slip

The appellant/accused Viz., Appu @ Jaisankar aged 42 years S/O Kothandapani in Crl.A 638 of 2012 was directed to be released on bail as per order of this Court dated 12/10/2012 made in M.P.No.1 of 2012 in Crl A No.638 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.03.2016

CORAM:

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

Crl.A.No.638 of 2012

Appu @ Jaisankar ... Appellant/Accused

vs.

The Inspector of Police,
T-1, Ambattur Police Station,
Chennai Respondent/Complainant

(Crime No.766/2007)

Criminal appeal preferred under Section 374 Cr.P.C., against the judgement and sentence dated 08.08.2012 passed by the III Additional District and Sessions Judge, Poonamallee, in S.C.No.33 of 2008.

For Appellant : Mr.N.R.Elango, Sr.counsel
for Mr.R.Vivekananthan

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu, J.)

The appellant is the sole accused in Sessions Case No.33 of 2008, on the file of the III Additional District and Sessions Judge, Poonamallee. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 08.08.2012, the trial Court convicted him under Section 302 of

the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant 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 Mrs.Pamavathy. She was residing at No.118, Pillaiyar Koil Street, Annai Sathya Nagar, Ambattur. P.W.3 is her four year old child. P.W.1 was residing opposite to the house of the deceased. P.W.2 is the wife of P.W.1. It is alleged that the deceased was leading a wavered life. On 5.10.2007, at about 6.00 a.m., it is alleged that the accused had gone to the house of the deceased with a view to have sex with her. But the deceased resisted and did not agree for the same. Enraged over the same, it is alleged that the accused poured kerosene on her and set fire and ran away from the scene of occurrence.

(b) P.W.2, at 6.00 a.m. had just come out of her house as usual. At that time, she found unusual smoke emanating from the house of the deceased. She immediately informed her husband, who was sleeping. Therefore, P.W.1 (the husband of P.W.2) and P.W.2 had rushed to the house of the deceased. At that time they found the accused fleeing away from the house of the deceased and he was wearing only an underwear. He was not wearing any shirt or any other clothe on his body. Following him, the deceased rushed out of her house in flames and fell down in front of her house. P.Ws.1 and 2 put out the fire. P.W.3 also ran out of the house crying and hugged P.W.2. P.Ws.1 and 2 enquired the deceased. She told that the accused, an auto driver, by name, Appu, poured kerosene and set fire to her.

(c) Immediately P.W.1 rushed her to the hospital. P.W.10, Dr.Josan Philips examined the deceased. At that time she was conscious. She had been brought by P.W.1. She told the doctor that the accused poured kerosene and set fire to her. He found 100% burn injuries on her body. Ex.P15 is the Accident Register. He admitted her as inpatient and informed the police about the same. On getting intimation from the hospital, P.W.11, the then Sub Inspector of Police, went to the hospital to record the statement of the deceased. He found the deceased in a conscious state. P.W.7, Dr.Boopathy, who was attending on her, gave opinion that she was fully conscious to make statement. Having ascertained the same, P.W.11 recorded the statement of the deceased under Ex.P11. On returning to the police station, he registered a case in Crime No.766 of 2007, under Section 302 of the Indian Penal Code, against the accused. Ex.P16 is the First Information Report. He forwarded Ex.P.16 to the Court.

(d) P.W.12, the Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.4 and another witness. He recovered a black colour pant, a T-shirt, a match box, a pair of cheppals, half burnt blanket and a cap of the plastic cane (M.Os.11 to 16). Then, he examined P.Ws.1 to 3 and recorded their statements. The deceased died in the hospital at 11.00 a.m. on the same day. On getting intimation from the hospital, he altered the case into one under Section 302 of the Indian Penal Code. Ex.P19 is the alteration report. Then, he conducted inquest on the body of the deceased between 11.30 a.m. to 1.30 p.m., on the same day and forwarded the body for post-mortem. P.W.9 conducted autopsy on the body of the deceased on the same day, at 2.50 p.m. He found the following injuries on the body of the deceased.

"External injuries: Deep burns over the face including the lips, neck, both sides of the chest, abdomen, both hands, both legs in front and back.

Posteriorly :- Neck, back and Trunk.
(100% burns shock) Heart : Blood clot in all the chambers. Lungs, Larynx, Trachea, liver, spleen, kidneys - Normal. Hyoid Bone Intact, Stomach: empty, Bladder:- 200 ml of urine present. Uterus : Normal and empty. Pelvis, Skull, Brain and Spinal Column:- Normal & Intact."

Ex.P14 is the post-mortem certificate. The Doctor opined that the death was due to the extensive burn injuries found on the body of the deceased.

(e) During the course of investigation, P.W.12, arrested the accused at 10.00 p.m., on the same day, in the presence of P.W.5 and another witness. On such arrest, the accused made a disclosure statement, in which, he disclosed the place where he had hidden the plastic can. In pursuance of the same, he took P.W.12 and the witnesses to the said place of hide-out and produced the plastic can. P.W.12 recovered the same under a mahazar, in the presence of the same witnesses. On returning to the police station, he forwarded the accused for judicial remand and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were traces of kerosene on the material objects and on completing the investigation, he laid a charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 of the Indian

Penal Code. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 13 witnesses were examined, 27 documents were exhibited besides 10 material objects. One Dr.Boopathy was again examined as C.W.1 and medical records pertaining to the deceased was marked as Ex.C1. Out of the said witnesses, P.Ws.1 and 2 have stated that at 6.00 a.m., they found unusual smoke emanating from the house of the deceased and when they rushed towards the house of the deceased, they found the accused fleeing away from the house of the deceased and at that time he was wearing only an underwear. Following him, the deceased also rushed out of her house in flames and fell down in front of the house. P.W.3, the child, was also rushing out of the house crying and she hugged P.W.2. At the earliest point of time, according to them, the deceased told them that it was this accused, who poured kerosene and set fire to her. P.W.3, the daughter of the deceased (the child) has stated that it was this accused, who tied the hands and legs of the deceased and poured kerosene and set fire to the deceased. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of material objects. P.W.5 has spoken about the arrest of the accused and the confession statement made by him and the subsequent recovery of plastic can. P.W.6 has spoken about the chemical examination conducted and he has stated that there were traces of kerosene in all the material objects. P.W.7 has spoken about the fact that at the time when P.W.11 recorded the statement of the deceased, the deceased was conscious. P.W.8, the learned Magistrate, has stated about the statement recorded by her from the witnesses under Section 164 of the Code of Criminal Procedure, 1973. P.W.9 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the fact that the deceased was brought to him for treatment in the Government Hospital. At that time, the deceased told him that the accused poured kerosene and set fire to her at her house at 6.00 a.m. on the same day. He has further stated that the deceased was fully conscious at that time. P.W.11 has spoken about the statement recorded from the deceased. P.Ws.12 and 13 have spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. This is a case based on circumstantial evidence. In this case, the prosecution mainly relies on the evidences of P.Ws.1 to 3 to prove the guilt of the accused. P.Ws.1 and 2 are the residents in the opposite house of the deceased. According to them, at 6.00 a.m., they found unusual smoke emanating from the house of the deceased. When they rushed to the house of the deceased, they found the accused fleeing away from the house of the deceased and at that time he was wearing only an underwear. They have further stated that the deceased also came out of the house in flames and she fell down on the floor. At the earliest point of time, the deceased told them that it was this accused, who poured kerosene and set fire to her. This is the earliest dying declaration made by the deceased orally to P.Ws.1 and 2. Immediately P.W.1 has taken her to the hospital. To P.W.10, Dr.D.Jason Phillip also the deceased told that the accused poured kerosene on her and set fire to her at 6.00 a.m., at her house. This is the second dying declaration made by the deceased. The third dying declaration was made under Ex.P13 to P.W.11. At that time, according to P.W.11, the deceased was conscious. P.W.7, Dr.Boopathy, on questioning, opined that the deceased was fully conscious and in a fit state of mind to make a dying declaration at that time. In all the three dying declarations, the deceased had consistently told that it was this accused, who poured kerosene and set fire to her. We do not find any reason to reject these three dying declarations. P.Ws.1 and 2 had further seen the accused running out of the house of the deceased. At that time he was wearing only an underwear. This conduct of the accused running away from the house of the deceased, at the crucial point of time, would also go to fully support the dying declarations made by the deceased. Above all, P.W.3, the child witness, has also spoken about the same. But the learned Senior counsel appearing for the accused would submit that a child witness cannot be believed, because she has stated that the accused tied the hands and legs of the deceased and then poured kerosene and set fire to her. According to the learned Senior counsel, this cannot be true. After all P.W.3 is a child witness and therefore, out of fading memory, she would have omitted to speak about some vital facts and out of anxiety, she would have added some facts more. Therefore, we cannot approach the evidence of P.W.3, as we do approach the evidence of an adult. Her evidence can be taken into account only to the limited extent that the accused was in the house of the deceased and there was quarrel between the accused and the deceased. The rest of the occurrence, namely, the accused set fire, after pouring kerosene, has been established by the conduct of the accused in fleeing away from

the scene of occurrence and from the three consistent dying declarations made by the deceased. The learned Senior counsel is not in a position to assail these circumstances, more particularly, the consistent dying declarations made at three different points of time by the deceased. From these evidences, we firmly hold that it was this accused, who poured kerosene and set fire to the deceased.

8. The learned counsel for the appellant would submit that the motive for the occurrence has not been established. As we already pointed out, it is the case of the prosecution that the deceased was leading a wavered life and at the time of occurrence, the accused had come to the house of the deceased to have sex with her. It is the case of the prosecution that since the accused refused for the same, he set fire to her. Ofcourse to prove these facts, no evidence has been let in by the prosecution. But on that score, we cannot reject the case of the prosecution that it is this accused, who poured kerosene and set fire to the deceased. It is not necessary that in all cases, the prosecution is bound to prove the motive. In view of the unassailable evidences available that it was this accused, who poured kerosene and set fire to the deceased, the absence of proof of motive would not in any manner cause any dent in the case of the prosecution. Therefore, we hold that the prosecution has proved the case beyond reasonable doubt. Thus, the trial Court is right in convicting the accused under Section 302 of the Indian Penal Code.

9. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

10. In the result, the appeal fails and the same is dismissed. The conviction and sentence imposed on the accused, by the trial Court, are hereby confirmed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.

2.The III Additional District and Sessions Judge,
Poonamallee.

3.The Judicial Magistrate,
Ambattur.

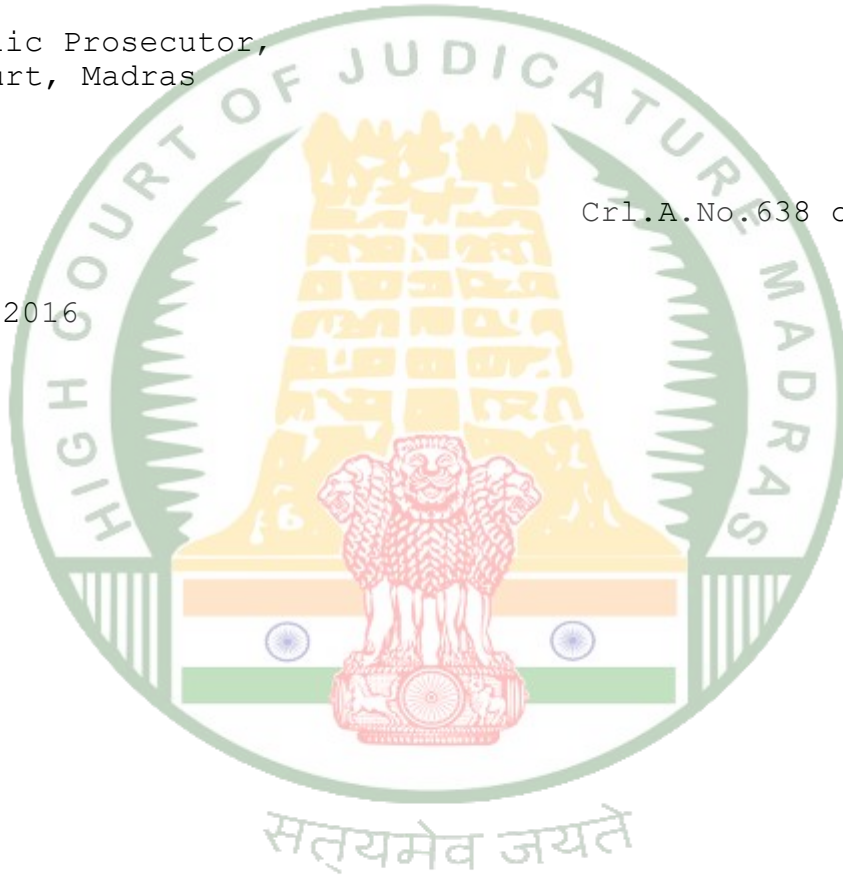
4.-Do- Thro The Chief Judicial Magistrate,
Tiruvallur.

5.The Superintendent,
Central Prison,
Puzhal, Chennai.

6.The Public Prosecutor,
High Court, Madras

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srg 29/04/2016



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