

Bail Slip

The Accused Namely Pugalendi, directed to be released o bail by the order of the Hon'ble Court made in M.P.No.1 of 2013 in Cr1 A 420 of 2013.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.420 of 2013

Pugalendi

... Appellant

- Vs -

State by Inspector of Police,
Kandili P.S., Vellore District,
(Cr.No.168 of 2011)

... Respondent

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned III Additional Sessions Judge, Vellore at Tiruppatur in S.C.No.72 of 2012 dated 26.04.2013.

For Appellant : Mr.V.Karthik
for M/s.T.S.Gopalan & Co.

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.72 of 2012 on the file of the learned III Additional Session Judge, Vellore at Tirupattur. He stood charged for offences under Sections 323, 506(i) and 302 I.P.C. The trial Court convicted him under all the three charges and sentenced him to undergo rigorous imprisonment for six months for offence under Section 323 I.P.C., to undergo rigorous imprisonment for one year for

offence under Section 506(i) I.P.C. and to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment for the offence under Section 302 I.P.C. 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:

2.1. The deceased in this case was one Mrs.Rajammal. P.W.1 is her husband and P.Ws.2 and 3 are their daughter and son respectively. They were all residing at Kamaraj Nagar in Sevathur village in Vellore district. The accused also belongs to the same village. The deceased was his aunt and he was far younger than the deceased. But the accused had illicit intimacy with the deceased for quite sometime.

2.2. On 01.04.2011, at 04.00 p.m., the deceased alone was at her house. P.W.1 had gone for work and P.Ws.2 and 3 had gone to school. Since the deceased was alone in her house, the accused entered into the house of the deceased. He advanced sexual overtures towards her and wanted her to consent for sexual intercourse. The deceased declined to consent to the said overtures. The accused got wild. He insisted the deceased to lie down immediately to facilitate him to have sex with her. When the deceased firmly refused, he intimidated her saying that he will do away with her and her family members and also he assaulted her with hands. This quarrel went on for about an hour. By about 05.45 p.m., since the deceased did not agree for sex, despite repeated insistence made by the accused, he closed the doors of the house, tied her hands with her saree, poured kerosene and set fire. When the deceased was in flames, making distress call, the accused fled away from the scene of occurrence.

2.3. P.W.4, the neighbour of the deceased, on hearing the distress call, rushed to the house of the deceased, by the time, the deceased rushed out of the house and just fell at the entrance of the house in flames. P.W.4 and the other neighbours who had also come, extinguished the fire. Then P.W.4 informed 108 ambulance service. The neighbours took the deceased in 108 ambulance to the hospital. P.W.16, examined the deceased on 01.04.2011 at 06.10 p.m. at the Government hospital, Tirupattur. The deceased was fully conscious. She told the doctor that at 5.45 p.m. while she was cooking, the kerosene stove bursted and as a result, she caught fire and thus sustained burn injuries. P.W.16, recorded the same in the accident register (vide Ex.P21). On examination, he found that she had sustained 50% of burn injures. He admitted her as in-patient in the hospital. He gave intimation to the police.

2.4. On receipt of the said intimation from the hospital, P.W.9 the Head Constable attached to the respondent police went

to the hospital and recorded the statement of the deceased under Ex.P1. In the said statement, she told that when she was cooking, her saree fell on the stove, caught fire and as a result, in the said accident, she sustained burn injuries. On returning to the police station, he placed the said statement to the Sub Inspector of Police for further action. But, no action was taken on the same.

2.5. Without even getting the deceased discharged and without the knowledge of the doctor, her relatives took away the deceased from the hospital on 02.04.2011. She was again readmitted in the hospital only on 04.05.2011. Again intimation was sent from the hospital to the police. One Mr.Veeramani the then Sub Inspector of Police rushed to the hospital and recorded the statement of the deceased. This time she told that the accused set fire to her.

2.6. On returning to the police station, he registered a case in Crime No.168 of 2011 under Section 307 I.P.C. against the accused. Ex.P7 is the F.I.R. He forwarded Ex.P6, the complaint and Ex.P7, the F.I.R., to the Court and the same were received by the learned Magistrate on 04.05.2011 at 3.00 p.m.

2.7. Taking up the case for investigation, P.W.11 proceeded to the place of occurrence on the same day and he prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. Then, he recovered a plastic can from the place of occurrence in the presence of the same witnesses under a mahazar and he also recovered a half burnt saree from the place of occurrence. He examined P.Ws.1 to 3 and few more witnesses.

2.8. Meanwhile, on receiving intimation, P.W.13 the learned Judicial Magistrate went to the hospital and recorded the dying declaration of the deceased on 04.05.2011 at 3.35 p.m. In the said dying declaration, the deceased told that the accused set fire to her.

2.9. The deceased died on 09.05.2011 at 12.30 p.m. out of the injuries despite treatment. P.W.11 altered the case into one under Section 302 I.P.C. and submitted the alteration report to the Court. Then he went to the hospital, conducted inquest on the body of the deceased and then forwarded the same for postmortem.

2.10. P.W.15 conducted autopsy on the body of the deceased. She found the following injuries on the body of the deceased:

"External injuries: (1) Left thigh and leg, right leg, face, knee, left palm, right shoulder, right palm, back of hand, palm,

body completely charred and undergoing decomposition. Maggots seen over decomposed skin over both legs and thighs.

Internal injuries: Skull and brain normal, neck, hyoid bone normal, chest and lungs pale, heart - empty, thorax cage normal, abdomen, stomach - greenish fluid seen, livers - pale, small intestine slightly distended, uterus - empty, external genital - charred."

Ex.P.20 is the postmortem certificate. She opined that the death was due to the burn injuries.

2.11. The investigation was then taken up by his successor P.W.12, who on completing the investigation, laid the chargesheet against the accused.

2.12. Based on the above materials, the trial Court framed appropriate charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 22 documents and 2 material objects were marked.

2.13. Out of the said witnesses, P.W.1 the husband of the deceased has stated that on 01.04.2011, he was informed that his wife had sustained burn injuries. He rushed to the house at 05.45 p.m. and at that time, when he enquired, she told him that when she was cooking, by accident, her saree caught fire and as a result she sustained burn injuries. He has further stated that he took her to the hospital immediately. On 02.04.2011, according to him, the Inspector of Police examined him. He has further stated that on 04.05.2011 for the first time, while at home, the deceased informed him that the accused set fire to her. Thereafter, he took her to the hospital for treatment and he has further stated that she died on 09.05.2011. P.W.2 the daughter of the deceased, who is a child witness, has stated that on the day of occurrence, when she was returning from the school, at about 05.45 p.m., there was a quarrel between the accused and the deceased and in the said quarrel, the accused set fire to the deceased. P.W.3 has also stated so. Thus, P.Ws.2 and 3 have claimed to be eyewitnesses. P.Ws.4 and 5 are the neighbours, who have stated that on hearing the distress call, when they went to the house of the deceased, they found the deceased with burn injuries. They were told by the deceased that while she was cooking, by accident, she caught fire. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.7 has spoken that he recorded the statements of P.Ws.2 and 3 under Section 164 Cr.P.C. P.W.8 has spoken about the arrest of the accused. P.W.9 has spoken about the statement recorded by him under Ex.P1 on 01.04.2011. P.W.10 has spoken about the statement recorded

by Mr.Veramani on 04.05.2011 and registration of the case. He has also spoken about the investigation done by him. P.Ws.11 and 12 have spoken about the further investigation done by them and the final report filed. P.W.13 has spoken about the judicial dying declaration recorded by her on 04.05.2011. P.W.14 is the scientific officer, who has spoken about the chemical analysis conducted on the material objects. P.W.15 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.16 is the doctor who admitted the deceased on 01.04.2011 at the Government hospital has stated that at the time of admission, the deceased told that she sustained injuries while cooking in a kerosene stove.

2.14. When the above incriminating materials were put to the accused, he denied the same as false. On his side, he examined three witnesses viz., D1 to D3. D1 is the doctor who admitted the deceased on 04.05.2011 at the Government Hospital, Tirupathur. Ex.P22 is the case sheet. He would state that on 04.05.2011 the deceased was brought by a group of people. He has further stated that earlier the deceased was taken from the hospital by the relatives of the deceased against the medical advice and the same has been recorded in the case sheet (vide Ex.D1). D.W.2 has stated about the Panchayat held to sort out the difference between the parties. D.W.3 the father of the accused has spoken about the enmity between the villagers and his family including the accused. Having considered all the above, the trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

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

4. Admittedly, the deceased sustained burn injuries on 01.04.2011 at about 04.00 p.m. At the time of occurrence, admittedly, P.W.1 was not present. According to the earliest version, on hearing the distress call of the deceased, P.Ws.4 and 5 the neighbours rushed to the house of the deceased, where they found the deceased rushing out of the house in flames. They only extinguished the fire. At that time, the deceased told that while cooking, by accident, from the kerosene stove she caught fire and sustained the burn injuries. On getting information about the same P.W.1 rushed to the house and to him also the deceased made the same statement. Thus, the earliest oral dying declaration made by the deceased was that it was a fire accident and she did not implicate the accused at all in any manner. Thereafter, the deceased was taken to the hospital. At the hospital also, at the earliest point of time, she told that she sustained injuries due to accident while cooking in a kerosene stove. Thus, the second dying declaration was also to

the effect that it was only an accident and she did not implicate the accused in any manner.

5. On getting intimation from the hospital, P.W.9 went to the hospital on the same day and recorded statement from the deceased under Ex.P1. This is the third dying declaration given by the deceased, in which also she stated that while cooking in a kerosene stove, by accident she caught fire and sustained injuries.

6. Though such a statement was given on 01.04.2011 itself in Ex.P1 to P.W.9 by the deceased, strangely, no case was registered on the said complaint for the reasons best known to the police. P.W.1 himself has stated that the Inspector of Police came to the place of occurrence on 02.04.2011 and interrogated many people. But these records have been completely suppressed by the prosecution. It is in evidence that against the medical advice, the deceased was taken back home from the hospital.

7. Only on 04.05.2011, she was again admitted in the hospital and on that date, on the intimation from the hospital, when the learned Judicial Magistrate went to the hospital to record the dying declaration, the deceased, for the first time, told that it was this accused who poured kerosene and set fire to her. On the same day, to the Sub Inspector of Police, she made a statement under Ex.P9, in which also, she implicated the accused. Thus, after about one month of the occurrence, for the first time, she made dying declarations implicating the accused. D.W.1 has admitted that the deceased was brought to the hospital by a crowd of people. Thus, there was every possibility for tutoring. There is no explanation as to why for about one month, the deceased was reiterating that it was an accident. In such view of the matter, it is very difficult to believe the judicial dying declaration made by the deceased to the learned Judicial Magistrate and also Ex.P9.

8. Apart from that, the prosecution now relies on the evidences of P.W.2 and 3, who have stated that when they returned from the school, they found quarrel going on between the accused and the deceased and in the said quarrel, the accused poured the kerosene and set fire to the deceased. It is in evidence that on 02.04.2011 itself, the Inspector of Police came to the house, interrogated everyone. But, at that time, these two witnesses did not say anything at all implicating the accused. For the first time, after one month, they disclosed these facts. These two witnesses are child eyewitnesses. It is common knowledge that children are prone to tutoring. In the light of the fact that for more than a month, they did not say anything about the above occurrence even to P.W.1, would go to show that they were tutored subsequently to say something

against the accused. At any rate, in our considered view, it is not safe to rely on the evidence of these two witnesses. If the evidences of these two witnesses are rejected and the judicial dying declaration and Ex.P9 are also rejected, then we find no other evidence against the accused to sustain the conviction. In such view of the matter, we hold that the prosecution has failed to prove the case beyond reasonable doubts.

9. In the result,

(i) The appeal is allowed; the conviction and sentence imposed on the appellant by the learned III Additional Sessions Judge, Vellore at Tiruppur in S.C.No.72 of 2012 dated 26.04.2013 is set aside and the appellant is acquitted.

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

(iii) The bail bond, if any executed, by the appellant / accused, shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

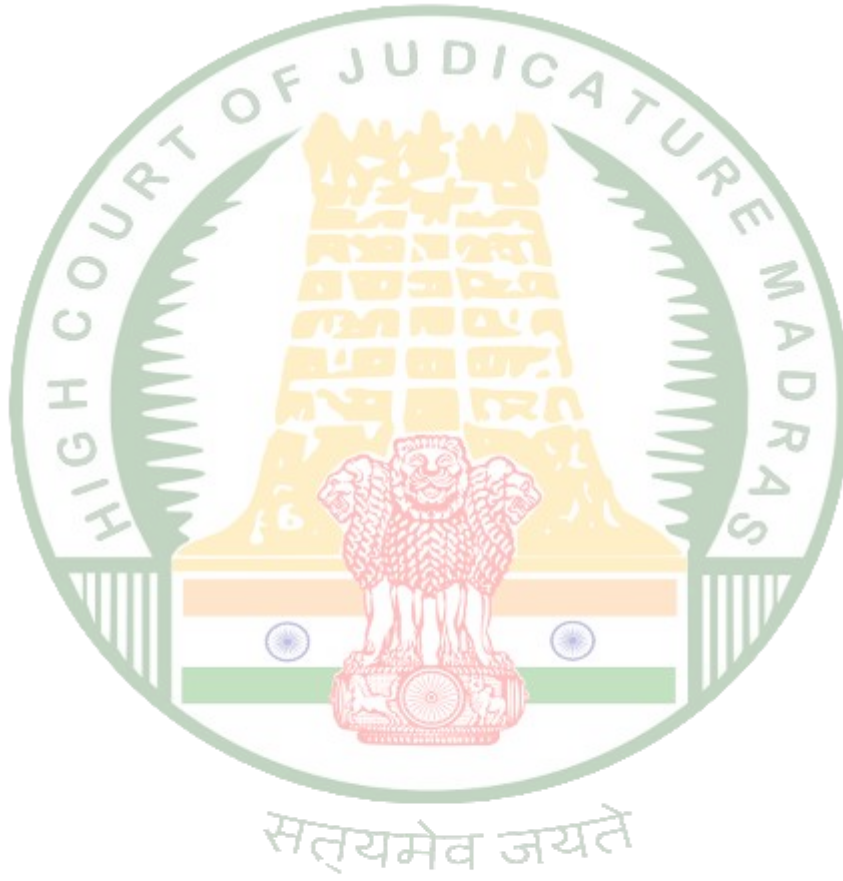
1. The III Additional Sessions Judge,
Vellore at Tiruppur.
2. The Inspector of Police,
Kandili P.S., Vellore District.
3. Additional Judge III
Vellore.
4. The Chief Judicial Magistrate,
Vellore.
5. The Section Officer,
VR Section, High Court, Madras.
6. The Superintendent,
Central Prison,
Vellore.

7. The Public Prosecutor,
Madras High Court.

+lcc to M/S.T.S.Gopalan & Co., Advocate Sr.18303

Cr1.A.No.420 of 2013

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srg 13/06/2016



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