

Bail Slip

That the Appellant herein/Sole Accused Viz Veeramani S/O Viswanathan was directed to be released on bail as per order of this Court dated 31.10.13 made in M.P.No.2/13 CrI.A.495/13 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.495 of 2013

Veeramani ... Appellant/sole Accused

Vs

State by
The Inspector of Police,
Vridhachalam Police Station,
Cuddalore District. ... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, District Mahila Sessions Court, Cuddalore made in S.C.No.212 of 2012 dated 30.01.2013.

For Appellant : Mr.C.Deivasigamani
and
Mr.M.Senthamizh Selvan,
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.212 of 2012 on the file of the learned Sessions Judge, District Mahila Sessions Court, Cuddalore. He stood charged for the offences under Sections 294-b and 302 of IPC. By judgment dated 30.01.2013,

the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-. No default sentence was imposed. The trial court, however, acquitted the accused from the charge under Section 294-b of IPC. Challenging the said conviction and sentence under Section 302 of IPC, 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 Mrs.Kalaiselvi. The accused is her husband. The marriage between them was celebrated 12 years before. It was a love marriage. But there was no child born out of the said wedlock. The medical examination revealed that the deceased would not bear a child. Therefore, the accused wanted to marry the sister of the deceased as his second wife. But this was not agreeable either to the deceased or to her family members. This resulted in frequent quarrels between the husband and wife. While so, the marriage of the sister of the deceased, namely, Adiparasakthi was arranged by her family members. For the betrothal function, the family members of the deceased had invited the accused also. But the accused neither attended the function nor he allowed the deceased to go to attend the function. The marriage was to take place on 02.09.2011.

(b) On 01.09.2011 at about 10.00 p.m., the deceased was getting ready to go over to her parental home to attend the marriage of her sister. The accused warned her not to go against his wish for the marriage. This resulted in a quarrel between the husband and wife. The deceased told that she was determined to go for the marriage and she further challenged that the accused could do whatever he was capable of doing against her. At the end of the said quarrel, the deceased, with a view to threaten the accused, took out a Kerosene Can and pretended as though she was going to commit suicide. But the accused snatched the same, poured the kerosene on the body of the deceased and set fire. In the said process, he also sustained injuries. The deceased cried for help.

(c) P.W.1, the mother of the deceased, who was residing few houses away from the house of the accused, came to the house of the accused on hearing the alarm raised. When she opened the main gate of the house and attempted to enter into the house, the accused emerged out of the house and ran away. P.W.1 went into the house and found the deceased lying nude with burn injuries. When P.W.1 enquired, she told her that the accused only set fire to her on account of the quarrel. P.W.1 put out the fire and with the help of one Sridhar (P.W.7), she took her to the hospital.

(d) P.W.7 took her to the Government Hospital at Vridhachalam. But the Doctor advised him to take her to Jipmer Hospital at Pondicherry as her condition was serious. Accordingly, they took her to Jipmer Hospital at Pondicherry. There also, they were informed that the condition of the deceased was serious and therefore, she could not be treated in the said hospital. Therefore, she was taken again to Kilpauk Medical College Hospital at Chennai. While on treatment, she died on 05.09.2011 at about 02.30 p.m.

(e) While the deceased was in the hospital, on intimation from the Doctor, P.W.9-the then Judicial Magistrate No.2, Vridhachalam, went to Vridhachalam Government Hospital at 12.05 a.m. on 02.09.2011. P.W.6 Doctor Subramanian, who was treating the deceased, on examining her, gave opinion that she was conscious. P.W.9 made queries to the deceased and from the answers elicited and from the opinion of the Doctor, he was satisfied that the deceased was in a fit state of mind to make a dying declaration. Then, he recorded the dying declaration at 12.30 p.m. Ex.P.6 is the dying declaration recorded by P.W.9. In the said dying declaration, the deceased told that she was set fire by her husband.

(f) Similarly, on receiving intimation from the hospital, P.W.11, the then Sub-Inspector of Police, Vridhachalam Police Station, went to Kilpauk Medical College Hospital at 6.00 a.m. on 03.09.2011 and recorded the statement of the deceased. Ex.P.9 is the said statement of the deceased in which also the deceased told that she was set fire by her husband. On returning to the police station, he registered a case in Crime No.734 of 2011 under Sections 294-b, 323 and 307 of IPC against the accused.

(g) The case was taken up for investigation by P.W.12. On 03.09.2011 at 3.00 p.m. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.8 and another witness. He recovered the Plastic Can and a Match Box containing match sticks under a Mahazar. Then, he examined few more witnesses and recorded their statements. On 04.09.2011, he examined the deceased at the hospital and recorded her statement. On 05.09.2011, after the death of the deceased, he altered the case into one under Section 294-b, 323 and 302 of IPC. He forwarded the Alternative Report to the court. Then, he conducted inquest on the body of the deceased on 06.09.2011 between 10.30 a.m. and 12.30 p.m. and forwarded the body for postmortem.

(h) P.W.10 conducted autopsy on the body of the deceased at Kilpauk Medical College Hospital at 02.00 p.m. on 06.09.2011. He found extensive burn injuries on the body of the deceased.

Ex.P.7 is his Postmortem Certificate. He gave opinion that the death was due to the burn injuries.

(i) P.W.12 during his investigation arrested the accused on 18.09.2011 at 12.30 p.m. at Vridhachalam Bus Stand in the presence of one Kuppusamy and Rajeswaran. On such arrest, he gave a voluntary confession, but no discovery of any fact was made out of the same. Then, he forwarded the accused to court for judicial remand. On completing the investigation, he 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 12 witnesses were examined and 13 documents and 2 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the mother of the deceased. She has spoken about the long standing ill feeling between the accused and the deceased and the quarrel over the denial of the family members of P.W.1 to give in marriage the sister of the deceased Adiparasakthi as the second wife to the accused. She has further spoken that on hearing the alarm raised by the deceased, when she went to the house, the accused rushed out of the house in a hurry. She further found inside the house the deceased lying with burn injuries. The deceased told that her husband set fire by pouring kerosene on her. P.W.2 is the brother of P.W.1. He has also spoken about the motive and he has further stated that when he went to the house of the deceased on hearing about the occurrence, the deceased was conscious and she told that her husband set fire to her. P.W.3 has turned hostile and she has not stated anything about the occurrence. P.W.4 is a neighbour of the deceased. She has stated that on hearing the alarm raised by the accused, when she went to the house, the deceased came out of the house with burn injuries. P.W.5 has stated that 20 days before the occurrence, the deceased had come to her house and informed her that the accused was beating her frequently as the family members of the deceased had refused to give Ms.Athiparasakathi in marriage to him as a second wife. She has further stated that on the day of occurrence, on hearing the alarm, when she went to the house of the accused, she found the deceased with burn injuries. She has further stated that the deceased told it was this accused who poured kerosene and set fire to her. P.W.6 is the doctor who examined the deceased at the Government Hospital, Vridhachalam on 01.09.2011 at 11.30 p.m. At that time, the deceased was conscious. She told P.W.6 that it was this accused who poured kerosene and set fire to her. He found 70% of burn injuries. He has further stated about his opinion

given to the Judicial Magistrate about the mental fitness of the deceased, when the learned Judicial Magistrate recorded the dying declaration. P.W.7, who is a neighbour of the deceased, has spoken that he took the deceased to the hospital along with others on the day of occurrence. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the material objects in the place of occurrence. P.W.9, the learned Judicial Magistrate has spoken about the dying declaration given by the deceased to him. P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the registration of the case and the statement made by the deceased at the Kilpauk Medical College Hospital. P.W.12 has spoken about the investigation done and filing of the final report.

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. 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.

8. This is a case based on circumstantial evidence. The first and foremost circumstance relied on by the prosecution is the motive. P.W.1, who is the mother of the deceased, has stated that the accused wanted to marry the sister of the deceased and since her family members refused to give her in marriage, he had grudge against the deceased. She further stated that on the day of occurrence, against the wishes of the accused, since the deceased was determined to go for the marriage which was to take place on the next day, the accused poured kerosene and set fire to the deceased. At the earliest point of time, when P.W.1 and other neighbours rushed to the house of the deceased, the deceased told them that it was this accused who poured kerosene and set fire. This oral dying declaration to P.W.1 and others, being earliest in point, carries weightage.

9. The next circumstance projected by the prosecution is the conduct of the accused. It is in evidence of P.W.1 that on hearing the alarm raised by the deceased, when she went to the house of the deceased and when she opened the main gate, the accused rushed out from the house in a hurry. When she further entered, she found the deceased lying with the burn injuries. This conduct of the accused in fleeing away from the scene of occurrence is only consistent with his guilt. If really the accused were innocent, he would have raised alarm and he would have made an attempt to save the life of the deceased. He did not do so. This conduct itself, in our considered opinion, is inconsistent with his so-called innocence pleaded.

10. When the deceased was taken to the Virudhachalam Government Hospital, she told the Doctor P.W.6 that it was this accused who poured kerosene and set fire to her. This is the second dying declaration made by the deceased which also carries weightage. P.W.6 is an independent witness. There is no evidence to even suspect that the deceased would have been tutored by somebody. Therefore, we accept this dying declaration as has been spoken by P.W.6.

11. Thereafter, to the learned Judicial Magistrate P.W.9, the deceased again reiterated that it was this accused who set fire to her. The mental fitness of the deceased has been spoken by P.W.9. From the queries made by him and from the certificate issued by the Doctor about the mental fitness of the deceased, the learned Magistrate was satisfied that the deceased was in a fit state of mind to make a dying declaration. That is how he recorded the dying declaration. In the said dying declaration, the deceased had told that with a view to threaten the accused, when she pretended as though she was going to commit suicide, the accused snatched the kerosene can from her, poured the kerosene on her and set fire. We do not find any reason to reject this third dying declaration which carries solemnity.

12. After the deceased was admitted at the Kilpauk Medical College Hospital, P.W.11 had gone there to record her statement. In that statement Ex.P.11, the deceased has again reiterated that it was this accused who poured kerosene and set fire to her. This is yet another dying declaration. In all these dying declarations, the deceased had consistently told that it was this accused who poured kerosene and set fire to her. There is no contradiction between these dying declarations. We do not find any circumstance which may even remotely give an inference that the deceased would have been tutored. Therefore, we do not find any reason to reject these multiple dying declarations

where the deceased had consistently told that it was this accused who poured kerosene and set fire.

13. The learned Counsel for the appellant would submit that the accused had also sustained injuries. He would further submit that when the deceased attempted to commit suicide, the accused tried to extinguish the fire and in that process, he sustained injuries. The submission of the learned Counsel that since the said attempt was not fruitful, the deceased had committed suicide, though seems to be attractive, we find no force in the said argument at all. The very fact that the accused sustained injuries would go to show that he was very much present at the time of occurrence and he sustained injuries in the very same occurrence. In the dying declaration, the deceased had stated that when she tried to go out with a view to escape while in flames, the accused pushed her inside and in that process, the accused sustained injuries. Thus, the prosecution has explained the injuries sustained by the accused. From these proved circumstances, in our considered opinion, the prosecution has clearly established that it was this accused who poured kerosene and set fire to her and caused her death.

14. Now, the question is as to what was the offence that the accused has committed by the said act. As we have already narrated, it is in evidence, more particularly, in the dying declarations that when the deceased wanted to go to attend the marriage of her sister, the accused did not allow her. This resulted in a quarrel. The quarrel went on for some time. The deceased expressed her determination to go for the marriage. When the accused insisted her not to go for marriage, the deceased told him that she was determined to go and she further told that he could do whatever he was capable of doing against her. At the extreme end of the said quarrel, the deceased took the kerosene can and pretended as though she was going to commit suicide by pouring kerosene and set fire. It was only, at that time, the accused snatched the kerosene can, poured kerosene and set fire to her. The narration of these facts would clearly go to prove that the accused was provoked by the deceased and out of the said provocation, which was also so sudden and also grave, the accused had lost his mental balance and thus set fire on her. This act of the accused would fall under third limb of Section 300 of IPC and it would also fall under first exception to Section 300 of IPC. Therefore, he is liable to be punished only for the offence under Section 304-I of IPC.

15. Now turning to the quantum of punishment, the accused had got no bad antecedents. He is a poor man. There was no premeditation. The occurrence was out of a quarrel. There are

chances for his reformation. Having regard to all the above, we are of the view that sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks would meet the ends of justice.

16. In the result, the Criminal Appeal stands partly allowed. The conviction and sentence imposed on the appellant by the trial court is set aside and instead, he is convicted under Section 304-I of IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks. The period of sentence already undergone by the accused in connection with this case shall be set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

tsi

To

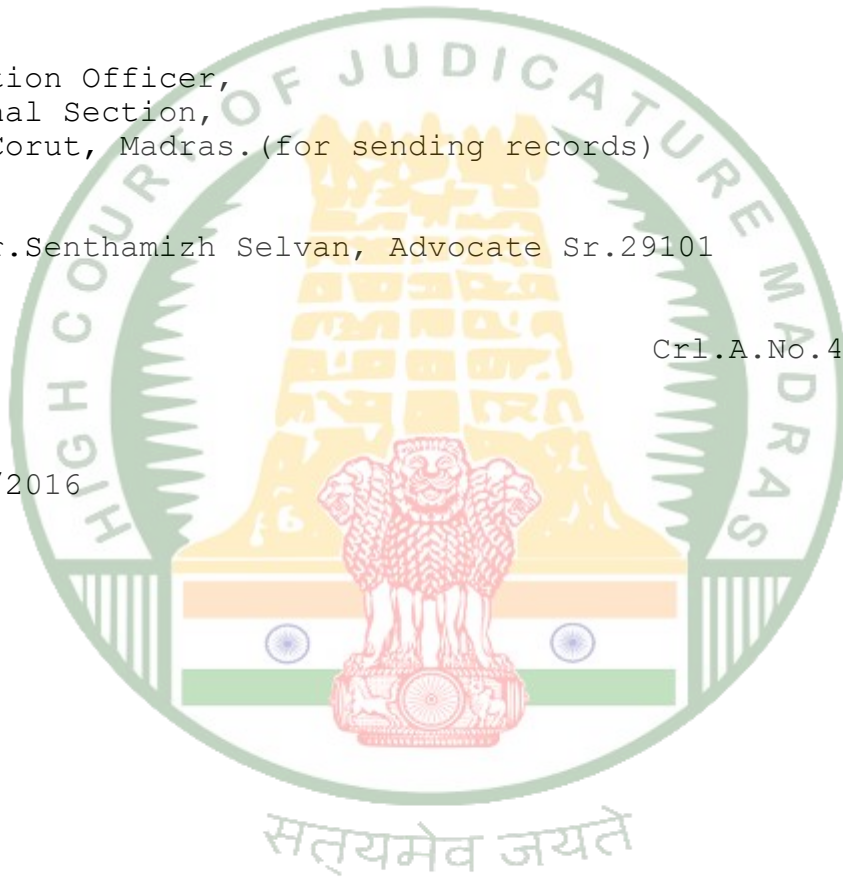
1. The Inspector of Police,
Vridhachalam Police Station,
Cuddalore District.
2. The Sessions Judge,
District Mahila Sessions Court,
Cuddalore.
3. The Judicial Magistrate No.1,
Virudhachalam.
4. -Do- thro The Chief Judicial Magistrate,
Cuddalore.
5. The Director General of Police,
Mylapore, Chennai.

6. The District Collector,
Cuddalore.
7. The Superintendent,
Central Prison, Cuddalore.
8. The Public Prosecutor,
High Court, Chennai.
9. The Section Officer,
Criminal Section,
High Court, Madras. (for sending records)

+1cc to Mr. Senthamizh Selvan, Advocate Sr.29101

Crl.A.No.495/2013

rj[col]
srg 27/07/2016



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