

Bail Slip

The Appellant/Accused was directed to be released on Bail in and by the Order of this Court dated 18.02.2013 made in M.P.No.1 of 2012 in Crl.A.904 of 2012 on the file of the High Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Crl.A.No.904 of 2012

Valarmathi

... Appellant/Accused

vs.

State, rep.by
Inspector of Police,
E2, Thirukalukundram Police Station,
Kancheepuram District. ... Respondent /Complainant
(Crime No.11 of 2010)

Criminal appeal preferred under Section 374 Cr.P.C., against the judgement dated 14.12.2012 passed by the Additional District and Sessions Judge, Kancheepuram District at Chengalpattu.

For Appellant : Mr.V.Murugesan

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.15 of 2011, on the file of the Additional District and Sessions Judge, Kancheepuram at Chengalpattu. She stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 14.12.2012, the trial Court convicted her under Section 302 of the Indian Penal Code and sentenced her to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo

rigorous imprisonment for six weeks. 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 Mr.Gopal was the husband of the accused. The accused was working in a private export company. 02.01.2010 happened to be a holiday. On that date, the accused wanted to go to her office. The deceased resisted the same. This resulted in a quarrel. At 8.00 p.m., on the same day, when the deceased and other family members were in their house, again quarrel arose between them since the accused expressed that she would go for job on the next day also. It is alleged that in culmination of the said quarrel, when the deceased was lying down, the accused poured kerosene and set fire to him. The deceased raised hue and cry. The accused fled away from the scene of occurrence. P.W.1 is a neighbour. Attracted by the alarm raised by the deceased, he rushed to the house of the deceased. By about 8.30 p.m., when he went to the house of the deceased, the deceased was sitting in the both room of the house. There were burn injuries all over his body. When P.W.1 enquired, the deceased told him that his wife poured kerosene and set fire to him. P.W.1's wife also was by his side. The other neighbours also rushed to the house of the deceased. They also heard what the deceased told. Then in an auto, P.W.1 and others took the deceased to the hospital.

(b) P.W.12-Dr.Ramprasath examined the deceased on 2.1.2010 at 11.55 p.m.at Chengalpattu Government Hospital. The deceased was then conscious. He told the Doctor that at 8.00 p.m. at his house, in a quarrel between him and his wife, his wife poured kerosene and set fire. P.W.12 found 80% of burn injuries on his body. Ex.P6 is the accident register. He admitted him as in-patient for treatment. He also gave intimation to the police as well as to the Judicial Magistrate in this regard.

(c) P.W.13, the then Judicial Magistrate, Dindigul, on receiving the said intimation from the hospital, rushed to the hospital at 7.05 a.m. on 3.1.2010. One Dr.S.Vetrichandar, was attending on the deceased. At that time, the deceased was conscious and oriented. The Doctor gave certificate that the patient was conscious, oriented and he was in a good state of mind to give dying declaration. To satisfy her judicial conscience, P.W.13 put few questions to the deceased. From the answers given by the deceased, she was satisfied that the deceased was in a fit state of mind to make a dying declaration and therefore, after making a record of the same, she proceeded to record the dying declaration. Ex.P7 is the said judicial dying declaration. In the said dying declaration, the deceased told that in the quarrel between him and his wife, his wife poured kerosene and set fire. After that, the Sub-Inspector of

Police (P.W.16), on getting information from the hospital, rushed to the hospital. When he visited the deceased on 3.1.2010, at 6.00 p.m., the deceased was fully conscious and oriented. He recorded the statement of the deceased, vide Ex.P9. On returning to the police station, he registered a case in Crime No.11 of 2010 under Section 294(b) and 307 of the Indian Penal Code. He handed over the case diary to the Inspector of Police for investigation. P.W.17 took up the case for investigation. He proceeded to the place of occurrence on 3.1.2010 at 7.45 p.m. and prepared observation mahazar and a rough sketch in the presence of P.W.9 and another witness. He also prepared a rough sketch showing the place of occurrence. From the place of occurrence, he recovered a plastic cane with kerosene smell, half burnt blood stained clothe, a pillow, a match box and 20 match sticks, under a mahazar, in the presence of the same witnesses. Then, he went to the hospital and recorded the statement of the deceased, who was still conscious. He repeated the same. Then P.W.17 examined few more witnesses and the Doctor. On 4.1.2010 he arrested the accused at 11.00 a.m. at Naduvankarai bus stop and forwarded her to the Court for Judicial remand. On 5.1.2010 at 2.00 p.m., the deceased succumbed to the burn injuries. Therefore, P.W.17 altered the case into one under Section 302 of the Indian Penal Code and submitted an alteration report to the Court. On the same day between 2.30 and 4.30 p.m., he conducted inquest on the body of the deceased and forwarded the body for postmortem. P.W.15 conducted autopsy on the body of the deceased on 5.1.2010 at 4.45 p.m. She found the following injuries.

Extremities - Pale. Following antemortem injuries seen on the body. (1) Extensive dermo epidermal burns seen all around the neck front and back of chest and abdomen, both upper and lower limbs including the genitalia with singeing of body hairs. Burnt areas found infected with sero sanguineous discharges. Face, palnes and soles-spared. Skull - Intact. Brain - NAP. Stomach - Empty but specific smell. Mucosa - NAD. All other internal organs - NAD. c/s - pale - Bladder empty - Genitalia - Intact."

Ex.P8 is the postmortem certificate. P.W.15, the Doctor gave opinion that the death was due to the burn injuries. She also further opined that there was smell of kerosene on the body of the deceased. PW.17 continued the investigation, collected the medical records and finally laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a charge under Section 302 of the Indian Penal Code. Since the accused denied the same, to prove the case, on the side of the

prosecution as many as 17 witnesses were examined, 13 documents and 4 materials objects were marked. Out of the said witnesses, P.Ws.1 and 2 are the neighbours, who have stated about the fact that on hearing the alarm, they rushed to the place of occurrence and they found the deceased sitting with burn injuries near the bathroom. When they enquired, he told them that his wife poured kerosene and set fire in a quarrel between them. P.W.3 is the daughter of the accused. She is a child, aged about 13 years. She has spoken about the quarrel between the accused and the deceased. She has further stated that when the quarrel was in progress, she left for her aunt's house. Thus, she was not an eye witness to the occurrence. P.W.4 is yet another child of the deceased. She has turned hostile. P.W.5 has also turned hostile. P.W.6 is a neighbour, who has also spoken about the fact that the deceased was sitting with burn injuries and he told that his wife set fire. P.W.7 is the then Judicial Magistrate No.II, Chengalpattu, who has stated that he recorded the statement of witnesses under Section 164 of the Code of Criminal Procedure, 1973. P.W.8 is yet another neighbour, who has again stated that the deceased told that his wife set fire to him. P.W.9 has spoken about the preparation of the observation mahazar and rough sketch and recovery of material objects from the place of occurrence. P.Ws.10 and 11 have turned hostile and they have not stated anything incriminating against the accused. P.W.12 has spoken about the statement made by the deceased when he was brought to him for treatment at 8.00 p.m. on 2.1.2010 and he has also spoken about the injuries found on the deceased. P.W.13 is the learned Magistrate, who has spoken about the judicial dying declaration recorded by him. P.W.16 is the Sub-Inspector of Police, who recorded Ex.P9-the statement of the deceased and registered the case. P.W.17 has spoken about the investigation done and the report filed.

4. When the above incriminating materials were put to the accused, she denied the same as false. However, she did not choose to examine any witness on her side nor mark any document.

5. Having considered all the above, the trial Court convicted the accused 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.

7. This is a case based on circumstantial evidence. The prosecution relies on the multiple dying declarations given by

the deceased. The earliest dying declaration was the oral dying declaration made to the neighbours such as P.Ws.1, 2 and others. These are the witnesses, who have stated that on hearing the alarm raised by the deceased, when they rushed to the house of the deceased, the accused was not found there, whereas, the deceased was sitting with burn injuries. When they enquired, he told that his wife poured kerosene and set fire. It cannot be said that at that point of time, he was tutored by anybody else to make such a statement. Thus, the earliest dying declaration made to the neighbours would go to clinchingly prove that it was this accused, who poured kerosene and set fire to the deceased. Next comes the statement, namely, dying declaration made by the deceased to the Doctor P.W.12 at 11.55 p.m on 2.1.2010. Until the deceased was taken to the hospital, he was not accompanied by any person, who had any motive against the accused. At that time also, he told the Doctor that his wife set fire, after pouring kerosene on him. This statement also is a dying declaration, upon which this Court can certainly make reliance. We do not find any reason to reject this dying declaration, which is a second dying declaration. The third dying declaration was in the form of statement made by the deceased under Ex.P9. That was recorded by the Sub-Inspector of Police at 6.00 p.m. on 3.1.2010. In Ex.P9 also the deceased had repeated what he had earlier told. This is the third dying declaration. The fourth dying declaration is the judicial dying declaration made to P.W.13, vide Ex.P7. We do not find any reason to reject this dying declaration also. Apart from that, P.W.3, the daughter of the deceased has stated about the quarrel which preceded the actual occurrence. Thus, the presence of the accused at the time of occurrence had been spoken to by none else than the daughter of the accused. From these evidences it has been clearly established by the prosecution that it was this accused, who poured kerosene and set fire to the deceased.

8. Now the question is as to what was the offence that was committed by the accused, by the said act. The learned counsel for the appellant would submit that the act of the accused would not fall under Section 302 of the Indian Penal Code, whereas, the Additional Public Prosecutor would submit that the trial Court was right in convicting the accused under Section 302 of the Indian Penal Code.

9. We have considered the above submissions. In all the dying declarations referred to above, the deceased had told that there was quarrel between him and the accused, which was going on for a long time. Even P.W.3 has also stated about the quarrel. It was only at the end of quarrel, it was alleged that the accused set fire to the deceased. In our considered view there was no motive for the accused to do away with the deceased. After all they were living under a common roof as husband and wife along with their children. Therefore, we are

of the view that the act of the accused would not fall under the first limb of Section 300 of the Indian Penal Code and at the same time, there are enormous evidences to show that the accused had intention to cause the burn injuries, which are sufficient to cause death, in the ordinary course of nature. Thus, the act of the accused would squarely fall under the third limb of Section 300 of the Indian Penal Code and at the same time, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 of the Indian Penal Code. As we have already pointed out, there was a wordy quarrel going on between the husband and wife on account of the fact that the accused insisted that she should be allowed to go for her job even on a holiday. The narration of the facts would give an indication that the deceased had some doubt about the fidelity of the accused. This must be the cause for the quarrel. In that quarrel, we are of the view, that certainly the deceased would have provoked the accused by either words or by deeds. Though there is no direct evidence to the said effect, making a overall analysis of the entire facts, we presume, as provided under Section 114 of the Indian Evidence Act that the accused would have been provoked by the deceased and in our considered view the said provocation would have been so grave enough to make the accused to loose her self-control and thus, driven by such grave and sudden provocation, the accused had set fire to the deceased. But for the said provocation, the accused would not have set fire to the deceased at all, as it is not in evidence that on any previous occasion there was any motive for the accused to cause any harm to the deceased. Thus, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 of the India Penal Code and therefore, the accused is liable to be punished under Section 304(1) of the Indian Penal Code.

10. Now turning to the quantum of punishment, the accused was aged about 26 years at the time of occurrence. She had three children. All the three children are school going and they are now in her care and custody. If the accused is imprisoned for a long time, there is likelihood of these three young children becoming orphans and they may even turn as anti-socials. Psychological behaviour of the children is likely to be affected if they are kept out of the care and custody of the mother. It is not reported to this Court that either before or after the occurrence, the appellant has shown any deviance from law. There is every chance of her reformation. It is also in evidence that the accused is a very poor woman and only out of her earnings, as coolie, the children are taken care of. The First Information Report itself shows that the deceased was an agricultural coolie and equally the accused is also a coolie. Though in normal course, going by the agravating circumstances,

for offence under Section 304(1) of the Indian Penal Code, sentence of imprisonment somewhere between 5 to 10 years may appear to be appropriate, in this case, having regard to the above mitigating circumstances, more particularly the welfare and the future of the children, together with the aggravating circumstances and having regard to the fact that there was no pre-medication and the occurrence itself was due to a sudden quarrel and provocation, we are inclined to show compassion in the matter of punishment.

11. Having considered all the above, we are of the view that convicting the accused under Section 304(1) of the Indian Penal Code and sentencing her to undergo Rigorous Imprisonment for four years, and to pay a fine of Rs.100/-, in default, to undergo Rigorous Imprisonment for one week would meet the ends of justice.

12. In the result, the conviction and sentence imposed on the appellant under Section 302 of the Indian Penal Code is set aside and instead she is convicted under section 304 (1) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.100/-, in default, to undergo Rigorous Imprisonment for one week.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Inspector of Police,
E2, Thirukalukundram Police Station,
Kancheepuram District.
- 2.The Additional District and Sessions Judge,
Kancheepuram District at Chengalpattu.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 5.The Judicial Magistrate,
Thirukalukundram.

6.The Chief Judicial Magistrate,
Chengalpattu.(for information).

7.The Officer Incharge,
Tiruchengode Police Station,
Tiruchengode.

Copy to

The Section Officer,
Criminal Section,
High Corut,
Madras.

Crl.A.No.904 of 2012

ak(CO)
srg(26/02/2016)



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