

BAIL SLIP

That the Appellant herein/Accused viz., Natchar, W/o.Muthu, was directed to be released on bail as per order dated 20.01.2016 made in CrI.MP(MD)no.476/2016 in CrI.A(MD)No.3/2014 on the file of this court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2016

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM

and

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.A.(MD)No.3 of 2014

Natchar

..Appellant/Single Accused

Vs.

State rep.by
Inspector of Police,
Karur Police Station,
Pudukottai District,
Crime No.14 of 2013.

..Respondent/Complainant

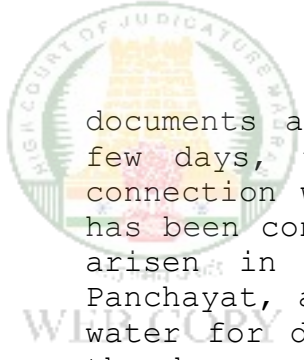
Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 27.12.2013 passed in Sessions Case No.68 of 2013 by the District and Sessions Court (Mahila Court), Pudukottai.

For Appellant : Mr.AR.L.Sundaresan
Senior counsel for M/s.P.Rameshkumar
For Respondent : Mr.T.Mohan
Addl.Public Prosecutor

JUDGMENT(Judgment of the Court was made by **A.SELVAM, J.**)

This Criminal Appeal has been directed against the conviction and sentence dated 27.12.2013 passed in Sessions Case No.68 of 2013 by the District and Sessions Court (Mahila Court), Pudukottai.

2.The case of the prosecution is that the accused by name Nachar is the mother of one Saravanan who is none other than the husband of Vijayarani. The deceased belongs to Chettiyenthal Village. The brothers of the deceased have conducted hotel business in Chennai. The said Saravanan has acquainted with them and used to visit the house of the deceased and due to that both the deceased and said Saravanan have acquainted with each other and prior to six years, their marriage has been performed. After their marriage, both of them have lived in Chennai in connection with their business. Since there is a loss in their business, the husband of the deceased has received six sovereigns of gold jewels from the deceased and pledged the same. After some time, the business of the said Saravanan has not become flourished and he asked the deceased to come to his native place. But the deceased has refused to concede his demand. On 08.04.2013 the said Saravanan has taken some



documents and returned to his native village by name Vettivayal. After few days, the deceased and her brothers have come to Keelakottai in connection with a marriage. On 10.04.2013 at about 07.45 pm, a panchayat has been convened near the house of the accused. At that time, a miff has arisen in between the accused and deceased. During the course of Panchayat, at about 08.45 pm., the deceased has asked the accused to give water for drinking. But the accused has doused kerosene on the body of the deceased and set fire and due to that the deceased has sustained burn injuries and initially the deceased (then injured) has been taken to Government hospital, Aranthangi and since her condition has become critical, she has been referred to Government hospital, Tiruchirapalli, where she has been admitted as an in-patient and on 14.04.2013 at about 06.30 pm., she passed away. The report given by the deceased (then injured) has been registered in Crime No.14 of 2013.

3. On receipt of the report given by the deceased (then injured), the Investigating Officer viz., PW17 has taken up investigation, examined connected witnesses and after receipt of death intimation, he changed section of law and continued investigation and made arrangements to conduct autopsy on the body of the deceased and accordingly, PW18 has conducted autopsy and she found the following external and internal injuries:

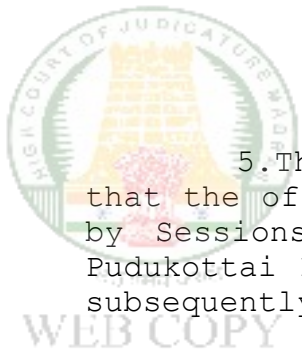
Wounds:

(1) Superficial infected burns wound present on the head, face, front sides and back of the neck, front and back of the trunk, both upper limb sparing left palm, both lower limb sparing both leg and perineum. Peeling and carbonization of cuticle present. Base of the burnt area is reddish. Floor is covered with greenish yellow colour foul smelling pus. Singeing of hairs present.

(2) Intravenous cut down wound on the left leg near the ankle - surgical treatment. The above mentioned wounds are ante - mortem. No other external, internal or bony wound.

Other findings: Peritoneum, - intact; Cavity - empty. Pleura - intact; cavity, - empty; Pericardium - intact; Cavity - straw colour fluid; Heart - normal in size; Myocardium - normal; Chambers - fluid blood; Valves - normal, Coronary vessels - patent, great vessels - normal; Lungs - C/s, congested; Larynx, glottis, Trachea, bronchi - intact, mucosa - pale; Hyoid bone - intact; Stomach - contains undigested cooked food material, no specific smell, mucosa - congested; Oesophagus - intact; Mucosa & Pancreas - pale; Gall bladder - full, no stones; liver, spleen & Kidney - C/s congested; Omentum and Mesentery - intact, normal; small intestine - yellowish chyme, no specific smell, mucosa - congested; large intestine - filled with gas; Urinary bladder - intact, empty, Uterus - normal in size, C/s empty; pelvis - intact, scalp, skull bones, membranes - intact; brain - Patechiaie present; Cerebra spinal fluid - clear; spinal column and spinal cord - intact."

4. The post-mortem certificate has been marked as Ex.P18. After completion of investigation, PW17, Investigating Officer has laid a final report on the file of the Judicial Magistrate Court, Aranthangi and the same has been taken on file in PRC No.22 of 2013.



5.The Judicial Magistrate, Aranthangi after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Pudukottai Division and taken on file in Sessions Case No.68 of 2013 and subsequently made over to the trial Court.

6.The trial Court after hearing arguments of both sides and upon perusing relevant records, has framed a charge against the accused under Section 302 of the Indian Penal Code and the same has been read over and explained to her. The accused has denied the charge and claimed to be tried.

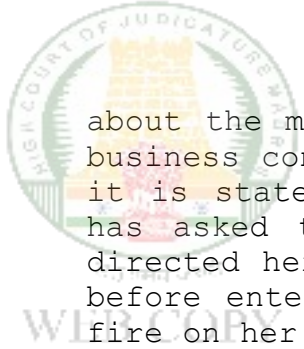
7.On the side of the prosecution PWs.1 to 18 have been examined and Exs.P1 to P18 and M.O.1 have been marked.

8.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against her, she denied her complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9.The trial Court after hearing arguments of both sides and upon appraising the evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced her to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10.The consistent case put forth on the side of the prosecution is that the brothers of the deceased have run a business in Chennai and during the course of their business, the son of the accused by name Saravanan has acquainted with them and used to visit their native village and under such circumstances, both the said Saravanan and deceased have loved each other and prior to six years their marriage has been performed. After marriage, both of them have settled in Chennai and the said Saravanan has done a business and since it has become flopped, he asked the deceased to come and settle in his native place. But the deceased has refused to concede his demand and on 08.04.2013, the said Saravanan after taking certain documents has alone returned to his native place and on 10.04.2013 at about 07.45 pm., a panchayat has been conducted near the house of the accused and during the course of panchayat, a dispute has arisen between the accused and deceased and after some time, due to thirsty, the deceased has asked the accused to give water for drinking. At the time of entering into the house of the accused, she doused kerosene on the body of the deceased and set fire and due to that, she sustained burn injuries and initially she has been taken to Government hospital, Aranthangi and since her condition has become critical, she has been referred to Government hospital, Tiruchirapalli, where she succumbed to injuries on 14.04.2013 at about 06.30 pm.,

11.The prosecution has set the law in motion only on the basis of the report alleged to have been given by the deceased on 11.04.2013 and the same has been marked as Ex.P1. In Ex.P1 it has been clearly stated



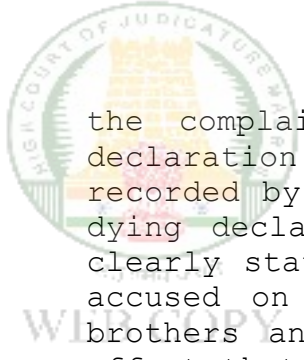
about the marriage between the deceased and the said Saravanan and their business conducted in Chennai and also loss occurred in business. Further it is stated in Ex.P1 that during the course of panchayat the deceased has asked the accused to give water for drinking and the accused has directed her to come to her house and accordingly she has gone there and before entering into the house, the accused has doused kerosene and set fire on her.

12.On the side of the prosecution, the brothers of the deceased namely Kalimuthu, Muthusamy, Nagarathinam and Rajakumari have been examined as PWs.1 to 4 and their specific evidence is that with regard to dispute arisen between the deceased and her husband, on the date of occurrence, a panchayat has been convened near the house of the accused and during the course of panchayat, the deceased has gone to the house of the accused and after some time all of them have heard queer noise and subsequently learnt that the accused has doused kerosene and set fire on the deceased. The specific evidence given by PW2 is that the accused has doused kerosene on the body of the deceased and set fire. After admitting the deceased (then injured), the concerned Judicial Magistrate (PW13) has recorded a dying declaration and the same has been marked as Ex.P9, wherein also the entire occurrence has been clearly narrated. The Doctor who conducted autopsy has been examined as PW18 and marked Exs.P17 and P18 and her specific evidence is that the death has occurred only due to burn injuries.

13.The trial Court after considering the evidence available on record has found the accused guilty under Section 302 of the Indian Penal Code and imposed sentence as mentioned in the Judgment.

14.The learned Senior Counsel appearing for the appellant/accused has contended that no occurrence has taken place as set out on the side of the prosecution. Even some of the prosecution witnesses have categorically admitted in their evidence that at the time of occurrence, the accused has participated in the panchayat and therefore, no possibility has arisen on the part of the accused to go inside the house for fetching water as demanded by the deceased and also pored kerosene on her and further PW1 has categorically stated in his evidence that after admitting the deceased in hospital, all of them have decided to give complaint and therefore, the dying declaration put forth on the side of the prosecution is not genuine and the same has been given on the basis of tutoring and no credence can be given to the same. But the trial Court without considering the vital lapses found on the side of the prosecution has erroneously found the accused guilty under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

15.As a repartee to the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has represented that the prosecution has set the law in motion only on the basis of Ex.P1, complaint alleged to have been given by the deceased (then injured), wherein it has been clearly stated that before such occurrence, she demanded water from the accused and she asked her to come to house and accordingly, both of them have gone there and before entering into the house, the accused has doused kerosene on the person of the deceased and set fire on her and since after giving Ex.P1, complaint,



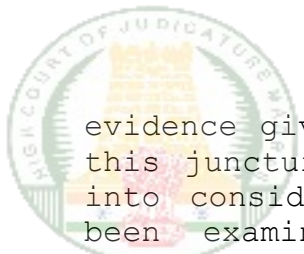
the complainant has passed away, the same can be treated as dying declaration and apart from Ex.P1, Ex.P9, dying declaration has been recorded by PW13 and his specific evidence is that at the time of giving dying declaration, the patient is conscious, wherein also it has been clearly stated about the overtacts alleged to have been committed by the accused on the person of the deceased and apart from Exs.P1 and P9, brothers and sisters of the deceased have given clear evidence to the effect that the accused has doused kerosene on the person of the deceased and the trial Court after considering the replete evidence available on record has rightly found the accused guilty under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court need not be interfered with.

16.The learned Senior Counsel appearing for the appellant/accused has drawn the attention of the Court to the decision reported in (2014) 7 Supreme Court Cases 405 [Umakant and another Vs. State of Chhattisgarh], wherein the Hon'ble Supreme Court has observed as follows:

"Dying declaration is accorded lot of credence and importance deviating from rule of evidence since such declaration is made by victim on verge of death - Further held, dying declaration requires no corroboration as long as it inspires confidence and is free from tutoring - However, on facts held, dying declaration in present case does not inspire confidence and appears to be a product of tutoring by family members - Hence, conviction on basis thereof unsustainable."

17.It is a settled and also an everlasting principle of law that much credence could be attached to dying declaration and the same does not call for any corroborative evidence. But the only limitation is that the same should inspire confidence of the Court. However, if any dying declaration is nothing but a product of tutoring by family members, the same can be rejected.

18.It is an admitted fact that the occurrence has taken place on 10.04.2013 at about 08.45 pm., in front of the house of the accused and due to overtacts of the accused, the deceased has sustained burn injuries and for the purpose of saving her life, immediately she has been taken to Government hospital, Aranthangi, where Ex.P10, Accident Register has become emerged. In Ex.P10, it has been clearly mentioned that the patient has reported to the effect that her mother-in-law pored kerosene and set fire on her. The author of Ex.P10 has been examined as PW14 and he has given evidence inconsonance with Ex.P10. Since in the first document viz., Ex.P10 it has been clearly mentioned to the effect mentioned supra, question of tutoring does not arise. It is true that one of the brothers of the deceased by name Kalimuthu has been examined as PW1 and during the course of cross examination he would say that he and others have talked together with regard to fire accident and accordingly the deceased has given a report. It has already been pointed out that in the first document viz., Ex.P10 it has been clearly mentioned as pointed out earlier. It is an admitted fact that after occurrence, the then injured (deceased) has been taken to Government hospital, Aranthangi for the purpose of saving her life and since her condition has become critical, she has been referred to Government hospital, Tiruchirpalli, where, subsequently she has been admitted. Under the said circumstances the



evidence given by PW1 would not militate the case of the prosecution. At this juncture, the conduct of the husband of the deceased must be taken into consideration. The husband of the deceased by name Saravanan has been examined as PW8 and he simply narrated panchayat and also occurrence. If really his mother viz., accused has had no connection whatsoever with the occurrence, the deceased being his wife, he would have definitely accompanied with other prosecution witnesses. But he remained silent even without going to hospital. Therefore, it is quite clear that since the accused has doused kerosene and set fire on the person of the deceased, PW8 Saravanan has remained silent.

19.It has already been pointed out that the prosecution has set the law in motion only on the basis of Ex.P1, complaint. After a lapse of four days from the date of occurrence, the defacto complainant has passed away. Further, the doctor who conducted autopsy has clearly opined that the death has occurred only due to burn injuries. Since the defacto complainant has passed away after giving Ex.P1, wherein sufficient reasons have been given as to how she sustained injuries and since after lapse of four days she passed away, as per Section 32(1) of the Indian Evidence Act, 1872, Ex.P1 can be treated as a dying declaration and the same does not call for any corroborative evidence.

20.As mentioned supra, apart from Ex.P1, Ex.P9, dying declaration is also available in the present case and the Magistrate who recorded the same has given clear evidence to the effect that at the time of recording dying declaration the patient is conscious. In Ex.P9 also it has been clearly mentioned the overtacts of the deceased. Therefore, as per Section 32(1) of the Indian Evidence Act, 1872, more credence could be attached to Exs.P1 and P9. Since in Exs.P1 and P9 uniform statements have been given by the deceased, the Court can unflinchingly come to a conclusion that the accused has committed the crime and further this Court is of the considered view that Exs.P1 and P9 are not the products of tutoring as alleged on the side of the accused.

21.The trial Court after considering the overwhelming evidence available on record has rightly invited conviction and sentence against the appellant/accused. In view of the discussion made earlier, this Court has not found any force in the contentions put forth on the side of the appellant/accused and altogether, the present Criminal Appeal deserves to be dismissed.

22.In fine, this Criminal Appeal is dismissed. The conviction and sentence passed in Sessions Case No.68 of 2013 by the District and Sessions Court (Mahila Court), Pudukottai are confirmed. The trial Court is directed to take appropriate steps so as to incarcerate the appellant/accused in prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar(CS)



2. THE INSPECTOR OF POLICE, KARUR POLICE STATION, PUDUKKOTTAI DISTRICT.

3. THE JUDICIAL MAGISTRATE, ARANTHANGI, PUDUKOTTAI DISTRICT.

4. -do-thro' THE CHIEF JUDICIAL MAGISTRATE, PUDUKOTTAI.

5. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

6. THE DIRECTOR GENERAL OF POLICE, MYLAPORE, CHENNAI-4.

7. THE DISTRICT COLLECTOR, PUDUKOTTAI.

8. THE ADDL. PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to Mr. D. Ramesh Kumar, Advocate in SR.21246

CrI.A. (MD) No.3 of 2014
15.04.2016

mj

PBK/SK-SKN/AR-I 26.04.2016 ::7P-10C: