**BAIL SLIP**

(A2) Parvathi, W/o, Manickavasagam, aged 54 years old was released on bail by the order of this Court dated 28.08.2015 made in MP(MD) No.1 of 2015 in CrI.A(MD)No.341 of 2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.A.[MD].No.341 of 2014

1.Senthilkumar

2.Parvathi

: Appellants/
Accused Nos.1 & 2

Vs.

State rep. by
the Inspector of Police,
Palayamkottai,
Tirunelveli District.
(Crime No.450/2010)

: Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 27.10.2014, made in S.C.No.347 of 2010, by the learned Sessions Judge (Mahila Court), Tirunelveli.

For appellants : Mr.V.Kathirvelu,
Senior Counsel for Mr.K.Prabhu

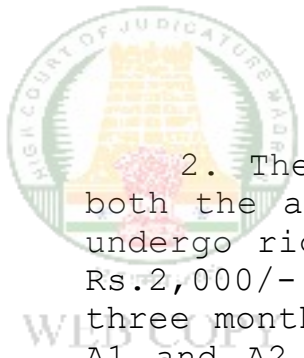
For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **S.NAGAMUTHU, J.**)

The appellants are the accused Nos.1 and 2 in S.C.No.347 of 2010 on the file of the learned Sessions Judge (Mahila Court), Tirunelveli. The trial Court framed as many as three charges against the accused as under:

Charge Nos.	Against	Offence U/s.
1	A1 and A2	U/s.498-A IPC
2	A1	U/s.302 IPC
3	A2	U/s.302 r/w 34 IPC



2. The trial Court, by judgment dated 27.10.2014, convicted both the accused under all the charges and sentenced A1 and A2 to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- each, in default to undergo rigorous imprisonment for three months for the offence under Section 498-A IPC and sentenced A1 and A2 to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for six months for the offence under Sections 302 and 302 r/w 34 IPC respectively. Challenging the said conviction and sentence, the appellants/A1 and A2 are before this Court with this appeal.

3. The case of the prosecution in brief is as follows;

(a) The first accused is the son of the second accused. The second accused is an old lady aged about 70 years. These two accused along with the deceased were living together at Kayathiri Amman Kovil Street, Thiruvananthapuram Pottal, Tirunelveli District. It is alleged that there were frequent quarrels between the first accused and the deceased on account of the suspicion of the first accused over the fidelity of the deceased. It is further alleged that on 21.03.2010 at 8.00 p.m., when the deceased was at her house, there arose a quarrel between the second accused and the deceased and there exchanged abusive words against each other. At that time, it is stated that the first accused took out a Kerosene cane and poured the kerosene on the deceased. Then the second accused gave a match box to the first accused and induced him to set fire to the deceased and kill her. Accordingly, the first accused set fire to the deceased. Then, both the accused ran away from the scene of occurrence.

(b) PW1 is the uncle of the deceased. He was residing at Pottal Village. He heard that the deceased had set fire to herself. Immediately, he rushed to the house of the deceased. He arranged for an ambulance and took the deceased to the hospital. PW23 - Dr. Jeevagireeda Victoria examined the deceased, who was brought by PW1, at Tirunelveli Government Hospital at 10.05 p.m. on 21.03.2010. At that time, the deceased was conscious. She told that in drunken state her husband poured kerosene and set fire. PW23 found 100% burn injuries on her body and admitted her in the hospital and informed the same to the Police. Ex.P19 is the Accident Register.

(c) On receiving such intimation, PW16, the then Sub Inspector of Police, Palayamkottai Police Station, went to the hospital at 11.45 p.m. on 21.03.2010. He recorded the statement of the deceased (vide Ex.P10). On returning to the Police Station, he registered a case in Crime No.450 of 2010 under Section 307 IPC against the accused. Ex.P11 is the FIR. He forwarded both the documents to the Court. PW26, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence on 22.03.2010 at 1.45 p.m. and prepared an observation mahazar and a case report in the presence of witnesses. He recovered a half burned plastic cane (MO.1), a half burned cell phone (MO.2) and a match box (MO.3) which were lying at the place of occurrence. He

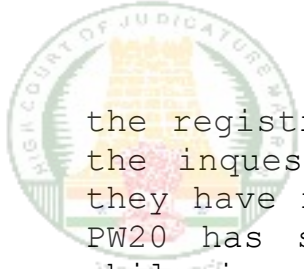
examined many witnesses including the deceased and recorded their statements. Then, the investigation was continued by his successor PW27.

(d) PW27 received an information that the deceased, who was under treatment, died at 8.15 a.m. on 23.03.2010. Therefore, the case was altered into one under Section 302 IPC. PW27 arrested the second accused on 22.03.2010 at 3.00 p.m. On 23.03.2010, he made a request to the Executive Magistrate cum Revenue Divisional Officer to hold inquest on the body of the deceased. PW17, the then Revenue Divisional Officer had conducted inquest on the body of the deceased on 23.03.2010 at 2.30 p.m. Ex.P13 is his report. PW27 continued the investigation. During the course of investigation, he collected the postmortem certificate and the other medical records pertaining to the deceased and he examined the doctors. On 23.03.2010, the first accused surrendered before the learned Judicial Magistrate No.I, Tirunelveli. PW27 took the police custody of the first accused on 05.04.2010 at 4.30 p.m. While in police custody, the first accused made a voluntary confession. Then, he forwarded him to the Court for judicial remand. On completing the investigation, he laid charge sheet against the accused.

(e) Based on the above materials, the trial Court framed charges against the accused 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 27 witnesses were examined and 24 documents and 3 material objects were marked.

(f) Out of the said witnesses, PW1, the uncle of the deceased, has stated that he came to the place of occurrence on hearing the message that the deceased had set fire to herself. He has further stated that he took the deceased to the hospital. PWs.2, 4, 5, 7, 8 and 9 have turned hostile and they have not supported the case of the prosecution in any manner. PW3 has spoken about the preparation of observation mahazar and a rough sketch and recoveries of MOs.1 to 3 from the place of occurrence. PW6, the daughter of the deceased, could not be examined as she was found to be incompetent to give evidence. PW10 and PW11 are the father and mother respectively of the deceased. They have stated that there were frequent quarrels between the accused and the deceased on account of the fact that the first accused had suspicion over the fidelity of the deceased. They have further stated that they came to know about the occurrence and went to the hospital.

(g) PW12 is the brother of the deceased. He has stated that he heard about the occurrence and went to the hospital to see the deceased. According to him, the deceased told that these two accused set fire to her. PW13, the learned Judicial Magistrate, has stated about recording of the judicial dying declaration of the deceased. PW14, the Head Clerk of the Magistrate Court, has stated that he received MOs.1 to 3 from the Police on being served with process. PW15 has stated that he took the dead body and handed over the same to the doctor for postmortem. PW16 has spoken about the statement recorded by him from the deceased (vide Ex.P10) and



the registration of the case. PW17, the then RDO, has spoken about the inquest held by him. PW18 and PW19 have turned hostile and they have not supported the case of the prosecution in any manner. PW20 has spoken about the confession made by the first accused while in police custody (No discovery of any fact was made out of the same).

(h) PW21 has stated that he handed over the FIR to the learned Magistrate at 12.30 p.m. on 23.03.2010. PW22 has spoken about the postmortem conducted and his final opinion regarding the cause of the death. PW23 has stated that she examined the deceased at the Government Medical College Hospital, Tirunelveli on 21.03.2010. At that time, the deceased was conscious. She told that her husband poured kerosene and set fire in drunken state. PW24 has stated that the deceased died in the hospital on 23.03.2010 at 8.15 a.m. PW25, yet another doctor, has stated that when the learned Judicial Magistrate came to the hospital for recording the dying declaration of the deceased, on 21.03.2010 at 4.45 pm., he was very much present and attending the deceased and on examining the deceased, he gave certificate that she is in fit state of mind to give dying declaration. PW26 and PW27 have spoken about the investigation done and filing of the final report.

(i) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. On their side, the first accused himself was examined as DW1 and the diploma certificate of the first accused has been marked as Ex.D1. The first accused has stated that on the day of the occurrence, he was not available at his house as he had gone to Tiruchendur temple along with the second accused. He has further stated that when they were returning from the temple, he received a phone message that the deceased had set fire to herself and attempted suicide. Thereafter, they came to the hospital. Thus, according to the first accused, both of them are innocent. Having considered all the above, the trial Court convicted both the accused, as detailed in the first paragraph of this judgment. That is how they are before this Court with this appeal.

3. We have heard the learned counsel for the appellants/A1 & A2 and the learned Additional Public Prosecutor appearing for the respondent. We have also perused the records carefully.

4. There is no denial of the fact that the deceased was the wife of the first accused and daughter-in-law of the second accused. In order to prove that these two accused set fire to the deceased by pouring kerosene, there is no eyewitness account. The prosecution relies on three dying declarations made by the deceased at three points of time. The earliest one is the statement made by the deceased to the doctor - PW23. According to PW23, when the deceased was brought to the hospital at 10.05 p.m., she was conscious and oriented. She told PW23 that in drunken state, the first accused poured kerosene and set fire. She did not make any mention about even the presence of the second accused at the time of the occurrence. Thus, in the earliest dying declaration, the deceased had categorically stated that it was the

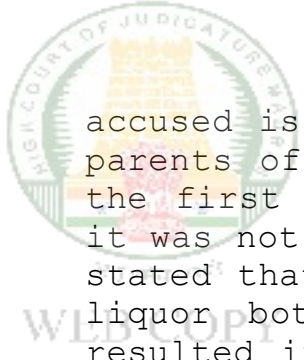
first accused, who set fire to the deceased.

5. The second dying declaration was the one recorded by the learned Judicial Magistrate. In that, the deceased had told that it was the first accused, who poured the kerosene and set fire, in culmination of the quarrel between them. In the said dying declaration, she has further stated that for the above occurrence, the second accused was responsible. This part of the statement of the deceased is only out of assumption. It has no evidentiary value. It is not the statement in the judicial dying declaration that A2 was actually present at the time of occurrence. Thus, the judicial dying declaration also does not go to prove the guilt of the second accused. However, it carries weightage against the first accused.

6. The third dying declaration is a one made to PW16. In that, the deceased has vividly stated that the second accused induced the first accused and the first accused set fire to her. We find it difficult to believe this part of the dying declaration, because at the two earlier dying declarations, the deceased had not implicated the second accused at all. Probably, after the arrival of the parents, on tutoring, she had implicated the second accused also in the crime. Thus, we find it difficult to believe the case, so far as the allegations against the second accused are concerned. In our considered view, it is not safe to convict the second accused based on the third dying declaration. Therefore, we are inclined to acquit the second accused from all the charges. So far as the first accused is concerned, we do not find any reason to reject the case of the prosecution.

7. The learned senior counsel would point out that PW1 has stated that he heard the information that the deceased had self immolated and then, he came to the house of the accused and took the deceased to the hospital. PW1 has further stated that when he came to the place of occurrence neither the first accused nor the second accused was present. In our considered view, it would only go to show that the first accused had run away from the scene of occurrence, after setting fire to the deceased. This conduct of the first accused also gives credence to the case of the prosecution. So far as the three dying declarations about which we have already discussed, it is crystal clear that consistently the deceased had told that it was the first accused, who set fire to her in drunken state. So far as the judicial dying declaration is concerned, the learned Magistrate has categorically stated that the deceased was in a fit state of mind to give dying declaration. We do not find any reason to doubt these three dying declarations against the first accused. From these dying declarations, we hold that the prosecution has clearly established that it was the first accused, who poured kerosene and set fire to the deceased.

8. Having come to the said conclusion, now we have to examine as to what was the offence that was committed by the first accused ~~by the accused~~. It is not in evidence that there was a motive for the accused to cause the death of the deceased. After all, the deceased and the first accused were living together and the first



accused is the husband of the deceased. It is the evidence of the parents of the deceased that there were frequent quarrels between the first accused and the deceased. This domestic in nature and it was not something unusual. On the day of the occurrence, it is stated that the first accused came in drunken state and he kept a liquor bottle in the house. The deceased threw it away. This resulted in a quarrel between the first accused and the deceased. It was only in that quarrel, the first accused had set fire to the deceased. Going by the natural human conduct, it is inferable that the first accused would have been provoked by the deceased by her words and deeds. In the said quarrel, having lost his mental balance, the first accused had set fire to the deceased. In our considered view, though the act of the first accused would squarely fall within the third limb of Section 300 IPC, the same would also fall under the first exception to Section 300 IPC and therefore, the first accused is liable to be punished only for the offence under Section 304(i) IPC.

9. Now turning to the quantum of punishment, when we were hearing the learned senior counsel appearing for the accused, the second accused, aged about 70 years, appeared before us, along with 3 children of the deceased, who are studying 7th standard, 5th standard and 3rd standard respectively. They are, now, under the care of the second accused, who is on bail all along. There is no property for the family and there is no income. The old woman viz., the second accused has been doing some coolie work for bringing up these three children. These children are also now educated. The brother of the first accused also appeared before us. He stated that he has also been taking care of the children. In our considered view, imposing severe punishment on the first accused would be detrimental to the welfare of these three children, as it would be difficult for the second accused viz., the old woman, to maintain them for a long number of years and as a result, the future of these three children would completely be spoiled. We found the children in tears rolling down from their eyes. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the first accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- would meet the ends of justice.

10. So far as the offence charged under Section 498-A IPC is concerned, we find no evidence at all against both the accused. Therefore, they are entitled for acquittal from the said charge.

11. In the result, this Criminal Appeal is partly allowed in the following terms;

(a) The conviction and sentence imposed against the first appellant/A1 under Section 498-A IPC are set aside and he is acquitted from the said charge.

(b) The conviction and sentence imposed on the first appellant/A1 under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of

Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(c) The conviction and sentence imposed on the 2nd appellant/A2 under Sections 498-A and 302 r/w 34 IPC are set aside and she is acquitted from all the charges.

(d) Fine amount, if any, paid by the first appellant/A1 shall be adjusted and the excess fine amount, if any, shall be refunded to the first appellant/A1. The fine amount, if any, paid by the second appellant/A2 shall be refunded. The period of sentence already undergone by the first appellant/A1 shall be given set off under Section 428 Cr.P.C.

SD/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate NO.I, Tirunelveli.
 - 2.-do-through The Chief Judicial Magistrate, Tirunelveli.
 - 3.The Sessions Judge (Mahila Court), Tirunelveli.
 - 4.The Inspector of Police,
Palayamkottai,Tirunelveli District.
 - 5.The Superintendent, Central Prison, Palayamkottai
 - 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 - 7.The District Collector, Tirunelveli.
 - 8.The Director General of Police, Chennai.
- +1cc to MR.K.PRABHU, ADVOCATE SR.No. 57183

gcg

CSL-MPA-SAR.1/09.11.2016:7P/10C

Judgement made in
Crl.A.[MD].No.341 of 2014
Dated: 28.09.2016