

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.11.2017

PRONOUNCED ON : 14.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.415 of 2014

Kumar

... Appellant

Vs.

State rep. by Inspector of Police  
Periyathatchur Police Station  
Tindivanam Taluk  
Villupuram District.

... Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C. against the judgment dated 23.07.2014 made in S.C.No.198 of 2013 passed by the learned I Additional District and Sessions Judge, Tindivanam by convicting and sentencing the appellant for the offences u/s 304 (II) IPC to undergo 5 years Rigorous Imprisonment.

For Appellant : Mr.P.Palaninathan  
For Respondent : Mr.K.Madhan  
Govt.Advocate (crl.side)

**JUDGMENT**

This appeal has been filed against the judgment dated 23.07.2014 passed in S.C.No.198 of 2013 by the learned I Additional District and Sessions Judge, Tindivanam.

2. The factual matrix of the case is as under:

[a] The accused is the brother-in-law of the deceased by marriage to his sister. On 14.07.2012, the accused fixed the roof of the house of the deceased till 6.00 p.m. when the deceased was away on work. The deceased returned home in the evening and quarrel ensued between them, in which, it is alleged that the accused had poured petrol on the deceased and set him on fire. The deceased was rushed to the Government Hospital, Mundiampakkam, where, he was examined by Dr.Suresh [not examined], to whom, he stated that a known male person poured petrol on him and set him on fire in his residence. The copy of the Accident Register which contains these recitals was marked as Ex.P.5.

[b] On intimation to the police, Kumar [P.W.15], the Investigating Officer, came to the hospital and recorded the statement of the deceased [Ex.P.11], based on which, a case in Cr.No.222 of 2012 under Sections 294(b), 323, 436 and 307 IPC was registered at 00.45 hrs., vide FIR [Ex.P.12]. The complaint [Ex.P.11] and the FIR [Ex.P.12] reached the jurisdictional Magistrate on 15.07.2012 at 10.10 a.m., as could be seen from the endorsement found thereon. Kumar [P.W.15] made arrangements for recording the dying declaration of the deceased and accordingly Mr. Santhosh [P.W.13], Judicial Magistrate, Sriperumbudur, came to the hospital and recorded the dying declaration [Ex.P.10].

[c] Kumar [P.W.15] went to the place of occurrence and in the presence of Ravi [P.W.6] and Paramasivam [not examined], prepared an Observation Mahazar [Ex.P.3] and Rough Sketch [Ex.P.13]. At the place of occurrence, he seized certain clue materials, viz., Neem stick [M.O.3], Bamboo stick [M.O.4], half burnt bamboo [M.O.5], brick [M.O.6] and burnt thatched roof [M.O.7] under cover of mahazar [Ex.P.4]. He examined the occurrence witnesses, viz., the wife and sons of the deceased. He arrested the accused on 15.07.2012 at 13 hours and recorded the statement. On the disclosure made by the accused, the Investigating Officer recovered a plastic can [M.O.1] and a match box [M.O.2] under Form 95. The accused was sent to the jurisdictional Magistrate for placing him under judicial custody.

[d] On 17.07.2012, the Investigating Officer received intimation from the hospital that the deceased had passed away and accordingly, he filed an alteration report [Ex.P.14] altering the offences to Sections 294(b), 436 and 302 IPC. He went to the hospital and conducted inquest over the body of the deceased and the inquest report was marked as Ex.P.15. He sent the body of the deceased for post-mortem and autopsy was conducted by Dr.Radhakrishnan [P.W.11], who in his evidence and in the Post-mortem Certificate [Ex.P.7], has noted burns all over the body and had opined that the death was due to cardio-respiratory arrest and septicaemia due to infection. The body of the deceased was handed over to his relatives and thereafter, the Investigating Officer examined a few witnesses like

the doctor who conducted post-mortem, *et al* and completed the investigation and filed the Final Report in P.R.C. No.19 of 2013 before the Judicial Magistrate No.II, Tindivanam.

3. On the appearance of the accused, he was furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C.No.198 of 2013. The Sessions Court framed charges for the offences under Sections 294(b), 302 and 436 IPC against the accused and when questioned, the accused pleaded not guilty. To prove the charges, the prosecution examined 15 witnesses, marked 15 exhibits and 7 Material Objects. The accused was questioned about the incriminating circumstances appearing against him under Section 313 Cr.P.C., which he denied. No witness was examined nor any document marked on behalf of the accused.

4. After considering the evidence adduced by the prosecution and hearing either side, the trial Court, by judgment dated 23.07.2014 in S.C.No.198 of 2013, acquitted the accused for the offences under Sections 294(b), 302 and 436 IPC and instead, convicted him under Section 304(II) IPC and sentenced him to undergo five years Rigorous Imprisonment, challenging which, the accused is before this Court.

5. Heard Mr.P.Palaninathan, learned counsel for the appellant and Mr.K.Madhan, learned Government Advocate (Crl.Side) appearing for the State.

6. In this case, the principal eye witnesses, viz., Angalammal [P.W.1], the wife of the deceased and Ramu [P.W.2] and Rahul [P.W.3], sons of the deceased turned hostile and did not support the prosecution case. Similarly, Munusamy [P.W.4] also turned hostile. It is the specific case of the prosecution that the accused was putting a new roof for the house of the deceased and was working till 6.00 p.m. on the fateful day. Even in the dying declaration [Ex.P.10] which forms the basis of the registration of the FIR, the deceased had stated that he picked up a quarrel with the accused and asked him to return the house documents and that only in the course of the said quarrel, the accused is said to have poured petrol on the deceased and set him on fire. Angalammal [P.W.1], wife of the deceased, had stated in her chief-examination that the deceased was addicted to liquor and he would pick up quarrel with her frequently; he would also pick up quarrel with the accused; unable to withstand the torture meted out to her by the deceased, she went to the parental home with her children, where she was being taken care of by her brother/the accused. She has further stated in her evidence that her husband had given house documents to a person and had taken loan and it was the accused who had redeemed the documents and was keeping them with him; that apart, the accused was building a new house for the deceased; while so, on the fateful day, the accused did the roof work till 6.00 p.m. and thereafter, the

deceased came and picked up a quarrel with him. Angalammal [P.W.1] further stated that her husband set fire to himself. At that point, she was declared hostile. Similarly, Ramu [P.W.2] and Rahul [P.W.3], the sons of the deceased also deposed that it was their father who used to get drunk and harass their mother and pick quarrels with their uncle, the accused.

7. With regard to the incident in question, they have also deposed that it was the deceased who had set fire to himself. This part of their evidence was rightly rejected by the trial Court and the trial Court had relied upon the three dying declarations of the deceased to hold that it was the accused who had set fire on the deceased. From the evidence adduced by the prosecution witnesses, it is obvious that the deceased was addicted to liquor and was not taking care of his wife and children, resulting in they getting estranged from him; it was the accused who brought them back, re-united them and also redeemed the property of the deceased and financed the construction of a new building unit for them; the accused himself worked for the welfare of the deceased and his family despite which the deceased picked up a quarrel with him and started abusing him. Even in the dying declaration [Ex.P.10], the deceased has stated that he picked up a quarrel with the accused for not completing the kitchen work quickly, for which, the accused is said to have abused him and had set him on fire. Therefore, the trial Court was right in not convicting the accused under Section 302 IPC, but

convicting him under Section 304(II) IPC in the facts and circumstances of the case.

8. It is reported by the police that it is the accused who is now taking care of the family of the deceased. In such view of the matter, this Court is of the opinion that though the conviction of the accused under Section 304(II) IPC is sustainable, yet, the sentence of five years Rigorous Imprisonment is reduced to three years Rigorous Imprisonment.

With the above modification in sentence, this appeal is dismissed.

14.12.2017

To

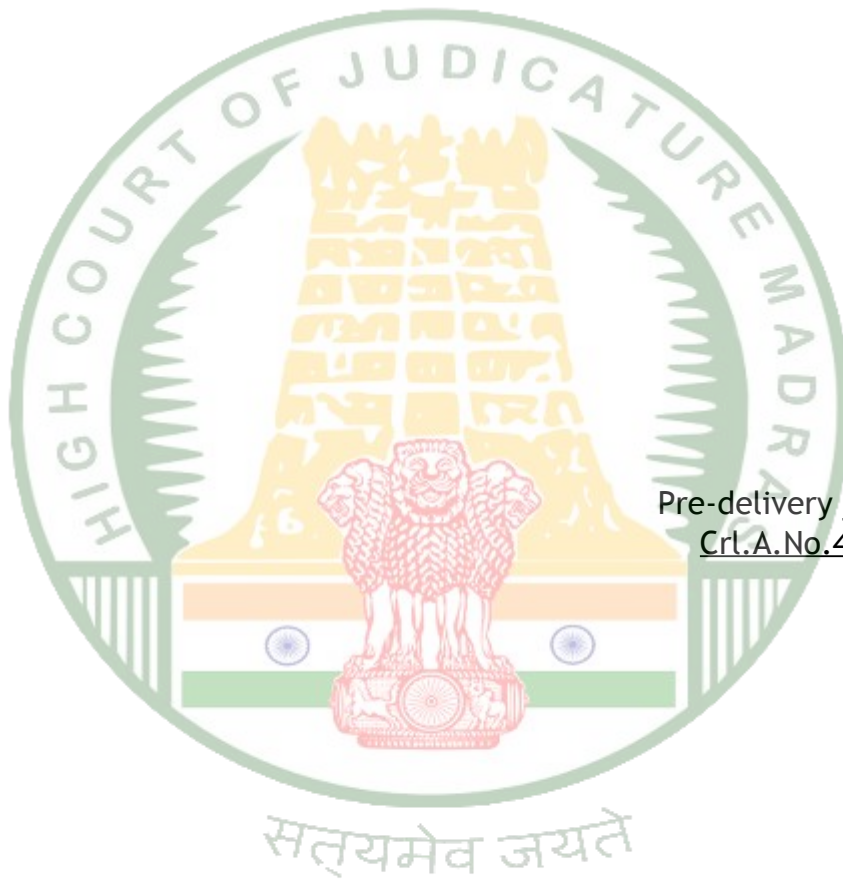
1. The Inspector of Police  
Periyathatchur Police Station  
Tindivanam Taluk  
Villupuram District.

2. The I Additional District and Sessions Judge,  
Tindivanam.

3. The Public Prosecutor,  
High Court, Madras.

P.N.PRAKASH, J.

gms



Pre-delivery judgment in  
Crl.A.No.415 of 2014

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