

BAIL SLIP

The appellant/accused. Namely senthil kumar S/O.krishnan was directed to be released on bail as per the order of this court dated 02.01.2008 and made in Crl. M.P. 1/07 in C.A.No.1153/07 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.1153 of 2007

Senthil Kumar

Appellant

vs.

State rep. By
The Inspector of Police,
T-4, Maduravayal Police Station,
Chennai.
(Crime No.367 of 2006)

Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 13.12.2007 passed by the learned Additional District and Sessions Judge, (Fast Track Court No.IV), Chennai, in S.C.No.37 of 2007.

For Appellants : Mr.A.M.Rahamath Ali

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The sole accused, in Sessions Case No.37 of 2007 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.IV), Poonamallee, is the appellant herein. He stood charged for the offence under Section 302 IPC. The Trial Court, after trial, by Judgment dated 13.12.2007, convicted the accused under Section 304(ii) IPC and sentenced him to undergo three years rigorous imprisonment and imposed a fine of Rs.1000/-, in default to undergo simple imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:

(i) The deceased in this case one Amaravathi is wife of the accused. She is the third wife of the accused. The accused without disclosing the earlier marriage to her, married the deceased. Then, there was a quarrel between them frequently. Subsequently, the accused also having an affair with another lady, and he did not come to the house regularly. On 18.03.2006 at about 8.00 p.m., the accused came to his house, at that time the deceased questioned him about the illegal intimacy of the accused with another lady. Then, there was a quarrel between the accused and the deceased, during the quarrel, the accused questioned the accused whether she is having any illicit intimacy with anybody else. Being provoked by the same, the deceased poured kerosene on her and threatened to commit suicide, and at that time the accused lighted a match stick and throw it on her and set fire on her, immediately, the deceased caught hold the accused and the accused also suffered burn injuries. Then the accused poured water and doused the fire. Subsequently, the accused took the deceased to the Kilpauk Medical College Hospital, Chennai and admitted her. P.W.12, the Doctor working in the Government Medical College Hospital, Kilpauk, admitted the deceased in the Hospital and sent a memo to the Judicial Magistrate, and also to the Police Station.

(ii) On receipt of the memo from the Hospital, P.W.13, the Sub Inspector of Police, attached to the respondent police station, went to the Hospital and recorded the statement of the deceased and based on the statement, registered a case in Crime No.367 of 2006, for the offence under Section 307 IPC and prepared first information report[Ex.P13].

(iii) P.W.14, the Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced the investigation. In the meantime, P.W.9, the XXI Metropolitan Magistrate, Chennai, on receipt of a memo from the Hospital, proceeded to the Hospital and after confirming that the deceased was in conscious and in a fit state of mind to give dying declaration, after obtaining a certificate from the duty Doctor, recorded the dying declaration of the deceased. P.W.14, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P3], a rough sketch [Ex.P14] in the presence of witnesses, and seized a 5 liters plastic can containing kerosene and match box in the presence of witnesses. Subsequently, on the same day at about 7.00 p.m., he arrested the accused and remanded him to the Judicial custody. Then, on 19.03.2006 at about 11.15 p.m., the deceased succumbed injuries and hence he altered the case into Section 302 IPC. Then, he went to the Hospital and conducted inquest over the dead body of the deceased in the presence of panchayators and prepared inquest report [Ex.P16] and sent the dead body for conducting postmortem autopsy.

(iv) P.W.8, a Professor, working in the Medical College

Hospital, Kilapak, Chennai, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

INJURY:

(1) Epidermo - dermo epidermal burns with exposure of reddish cuticle seen over face, neck, both sides of chest, and middle of abdomen, front of both thigh and part of legs, front of both forearms and part of arm including right palm (50% Burns). No other external or internal injury are made out. Gentian violet ink mark seen over left big toe.

He opined that the deceased would appear to have died of hypovolumic shock due to burns and he has given postmortem certificate [Ex.P5]. P.W.14, continued the investigation, examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above, and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 14 witnesses, exhibited 20 documents and 8 material objects were marked.

4. Out of the witnesses examined, P.W.1 is the father of the deceased. He spoke about the marriage between the accused and deceased and after came to know about the occurrence, went to the Hospital, at that time, the deceased told him that there was a quarrel between the accused and deceased, she poured kerosene on her, the accused set fire on her. P.W.2 is the mother of the deceased. She is also spoke about the marriage between the accused and deceased. P.W.3 is the Doctor working in the Government Medical College Hospital, Kilpauk. He admitted the deceased and accused in the Hospital. According to him, the accused brought to the deceased to the hospital, where, the deceased told him that the accused poured kerosene and set fire on her. He has also admitted the accused as the accused also suffered burn injuries. P.W.4 is the brother of the deceased. He spoke about the quarrel between the deceased and accused. P.W.5 turned hostile. P.W.6 is neighbour of the deceased. According to him, after hearing the alarm he went to the house of the deceased and there is no substance in his evidence. P.W.7 is witness to the observation mahazar and recovery of M.O.1. P.W.8 is the Professor working in the Government Medical College Hospital, Kilpauk, Chennai. He conducted postmortem autopsy and given postmortem certificate[Ex.P5]. P.W.9, the learned XXI Metropolitan Magistrate, Chennai, recorded the dying declaration of the deceased. P.W.10, the Photographer, took photograph in the scene of occurrence. P.W.11 is Head Constable attached to the respondent Police Station. He identified the

dead body for postmortem and after postmortem he submitted the letter to the Forensic Lab. P.W.12 is the Doctor working in the Government Medical College Hospital, Kilpauk, Chennai. He has given treatment to the deceased and also sent intimation to the Judicial Magistrate Court as well as to the respondent police. P.W.13 is the Sub Inspector of Police attached to the respondent police station. According to him, on receipt of the memo from the hospital, went to the hospital, recorded the statement of deceased, registered a case and prepared first information report. P.W.14 is the Inspector of Police attached to the respondent police station. On receipt of the first information report, commenced the investigation, prepared observation mahazar and rough sketch, arrested the accused, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was total denial. The accused has examined the grand mother of P.W.1, and did not mark any document.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court.

7. I have heard Mr.A.M.Rahamath Ali, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the materials available on record.

8. It is a case of circumstantial evidence. The Prosecution, to prove the charge against the accused, has mainly relied upon the dying declaration of the deceased. There are three dying declarations in this case. The first dying declaration was given before the Doctor. P.W.8, the Doctor, who has admitted the deceased in the Hospital, at the time, the deceased told him that it is only her husband poured kerosene and set fire on her. Subsequently, she has given statement before P.W.13, the Sub Inspector of Police, who recorded the statement of the deceased in the Hospital, where, the deceased has stated that at the time of occurrence, there was a quarrel between the accused and deceased and while the accused suspecting the fidelity of the deceased, the deceased poured kerosene herself, at that time the accused lighted the match stick and throw it on her and set her on fire. Subsequently, P.W.9, the learned Judicial Magistrate has recorded the dying

declaration of the deceased. Before recording dying declaration, the learned Judicial Magistrate being satisfied that the deceased is good conscious and in a fit state of mind to give dying declaration and after obtained certificate from the Doctor, he recorded the dying declaration of the deceased, where, the deceased told him that, the deceased poured kerosene on herself, and threatened to commit suicide, at that time the accused lighted a match stick and throw it on her, the deceased catch hold of the accused and he has also suffered burn injuries. From the above dying declarations, the deceased consistently stated that it is only this accused lighted the match stick and set her on fire.

9. It is a settled principle of law that dying declaration can be the sole basis for convicting an accused, even without any corroboration, provided dying declaration should be genuine, voluntary, consistent and credible. Considering all the above circumstances, this Court fully satisfied that the dying declarations of the deceased is voluntary, consistent and credible, and hence I find no reason to reject the dying declarations. From the above proved circumstance, I am of the considered opinion that the prosecution has clearly establish that it was this accused set fire on her wife and caused her death. Considering the fact that the occurrence took place due to sudden provocation, without any premeditation, the trial Court convicted him under Section 304 (ii) IPC. I find no illegality or perversity in it.

10. In respect of the quantum of punishment is concerned, the trial Court convicted the accused and sentence him to undergo three years rigorous imprisonment and imposed a fine of Rs.1000/-, in default to undergo simple imprisonment for six months. It is not a premeditated murder. On the date occurrence, due to a quarrel, the occurrence had taken place. The accused has no bad antecedence and he is also a poor man. Having regard to the same, I am of the considered view that sentencing the accused to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed and the conviction of appellant under Section 304(ii) IPC is confirmed and the sentence is modified and the appellant is sentenced to undergo two years rigorous imprisonment and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks. It is directed that the period of sentence already undergone by the appellant/accused shall be given set off as required under Section 428 IPC.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, No.
Poonamallee.
2. The chief Judicial Magistrate,
Tiruvallur.
3. The Additional District and Sessions Judge,
Fast Track Court No.VI,
Poonamallee.
4. The Inspector of Police,
T-4, Maduravayal Police Station,
Chennai.
5. The Public Prosecutor,
High Court, Madras.
6. The District Collector,
Tiruvallur.
7. The Director General of Police
Mylapore, Chennai.

Cr1.A.No.1153 of 2007

SSI (CO)
TR(23/11/2017)