

Bail Slip

The Appellant/Petitioner/Accused namely Settu was released on bail as per order of this court dated:08.05.2008 made in MP.No.1/2008 in CrI.A.224/2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.224 of 2008

Settu ... Appellant
vs.

The State,by
The Inspector of Police,
Kurinjipadi Police Station,
Kurinjipadi.

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 31.01.2008 passed by the learned Additional District and Sessions Judge, (Fast Track Court No.2), Cuddalore, in S.C.No.136 of 2005.

For Appellant : Mr.R.Rajan

For Respondent : Mrs.M.F.Shabana

Government Advocate(CrI. Side)

JUDGMENT

The first accused in Sessions Case No.136 of 2005 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.II), Cuddalore, is the appellant herein. There are seven accused in this case. Out of which, A3 to A7 are juvenile and they have faced the trial separately. A-1 and A-2 alone faced the present trial. A-1 and A-2 stood charged for an offence under Sections 147, 302 r/w 149 and 306 IPC. The Trial Court, by judgement dated 31.01.2008, found the first accused guilty and convicted him under Section 147 IPC and sentenced him to undergo six months rigorous imprisonment and convicted under Section 304(ii) IPC and sentenced him to undergo seven years rigorous imprisonment and no fine amount was imposed and the second accused is acquitted from all the charges levelled against him. Challenging the above said conviction and sentence, the appellant/first accused is before this Court, with this appeal.

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

(i) The deceased in this case one Selvi is wife of P.W.5. They are residing at Rajiv Gandhi Nagar, Kurinjipadi. One Iyemunnisha is the aunt of the deceased and she was residing near the house of the deceased. There was a quarrel between the deceased and the said Iyemunnisha. On the date of

occurrence, at about 7.00 p.m., P.W.5/the husband of the deceased, after finishing his work, return back to his house. At that time, the deceased informed him about the quarrel, and P.W.5 went to the house of said Iyemunnish and quarrelled with her, at that time, the appellant and other juvenile accused came to the scene of occurrence and they scolded P.W.5, and beaten him and they have also scolded the deceased with filthy language. Felt insulted, the deceased went inside her house, took a kerosene can, poured kerosene on her and trying to set fire on her, at that time, the first accused lighted the match stick and throw the same on the deceased, and set fire on her. Immediately, P.W.5 and others doused the fire and she was taken to the Government Hospital, Cuddalore.

(ii) P.W.9, the Doctor, working in the Government Hospital, Cuddalore, admitted the deceased in the Hospital at about 10.15 a.m., at that time, the deceased was conscious and told him that at about 9.00 p.m., the first accused set fire on her. The deceased suffered 75% burn injuries. Then, P.W.9, has given intimation to the Judicial Magistrate Court and to the respondent police.

(iii) P.W.8, the learned Judicial Magistrate No.III, Cuddalore, on receipt of the intimation, reached the Hospital at about 11.25 p.m., and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, obtained certificate from the Doctor to that effect and after putting necessary question, recorded the dying declaration of the deceased. Wherein the deceased stated that the first accused poured kerosene and set fire on her.

(iv) P.W.15, the Inspector of Police, working in the respondent police station, on receipt of the information from the Government Hospital, Cuddalore, on 11.08.2003 at about 2.45 p.m., he proceeded to the Hospital, recorded the statement of deceased and based on the statement, registered a case in Crime No.472 of 2003 for an offence under Section 307 IPC and prepared first information report[Ex.P9]. Subsequently, on 11.08.2003 at about 11.30 p.m., the deceased succumbed to injuries and hence he altered the case into Sections 147, 148 and 302 IPC, prepared alteration report [Ex.P10], sent the same to the Judicial Magistrate Court. Then, he proceeded to the scene of occurrence, prepared an observation mahazar[Ex.P12], a rough sketch[Ex.P11]. Then, on 12.08.2003, he went to the Government Hospital, Cuddalore, conducted inquest over the dead body of the deceased in the presence of panchayators between 10.00 a.m., and 12.00 a.m., and prepared inquest report [Ex.P13], and he sent the dead body along with a Memo to the Government Hospital, Cuddalore for conducting postmortem autopsy.

(v) P.W.9, the Doctor, working in the Government Hospital, Cuddalore, conducted postmortem autopsy on the dead body of the deceased and he found the following injuries:-

External Injuries:

Extensive burns on the whole of chest, neck, back and both upper limbs. Face burnt, Scalp hairs partially burnt. Burn on

the whole abdomen and both thigh. 75% burn present.

He opined that the deceased would appear to have died of shock due to burn injuries. He has given postmortem certificate Ex.P4.

(vi) P.W.15, continued the investigation, arrested the accused, remanded them to judicial custody, recovered the material objects, 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 the case of prosecution, as many as 15 witnesses were examined and 17 documents were exhibited and 1 material object was marked.

4. Out of the said witnesses examined, P.W.1, is the minor son of the deceased. According to him, there was a quarrel between one Iyemunnisha and deceased, and his father P.W.5 came to the house after finishing his work, at that time, the deceased informed him about the quarrel and P.W.5 went to the house of said Iyemunnish and quarrelled with her, at that time, the appellant and other accused came to the scene of occurrence and they scolded with P.W.5 and beaten him and they have also scolded the deceased with filthy language. The deceased went inside the house, took kerosene, poured it on her, and while she was trying to set fire on her, the first accused lighted the match stick and throw it on the deceased and set fire on her. P.W.2 is the brother of the deceased. According to him, at the time of occurrence, he went to the house of the deceased, at that time, seven persons came to the house of the deceased and they beaten P.W.5, and they have also scolded the deceased with filthy language, feeling ashamed she went inside the house and took kerosene and poured on her, at that time the first accused set fire on her. Then, they took the deceased to the Hospital. P.W.3 is the wife of P.W.2. She know the deceased and accused. At the time of occurrence, she went to the house of the deceased along with her husband. At that time, seven persons came to the house of the deceased and they have beaten P.W.5 and they have scolded the deceased with filthy language, feeling ashamed she went inside the house and took kerosene and poured on her, at that time the first accused set fire on her. Then, they took the deceased to the Hospital. P.W.4 is a resident of Kurinjipadi. According to him, there was a quarrel in the house of deceased but he went his house and he has not seen the occurrence.

5. P.W.5 is the husband of the deceased. According to him, there was a quarrel between his wife and one Iyemunnisha and he reported the same to the panchayatars, the panchayators told him that they will enquire the matter next week. At that time, the accused came there and they have beaten him and they

scolded the deceased with filthy language, and she went inside the house, took the kerosene can and poured kerosene on her, at that time the first accused came there, the deceased asked the first accused to give match box, at that time, the first accused told her that instead of giving match box, he lighted the match stick and throw it on her and set fire on her. Immediately, P.W.5 along with others doused the fire and took the deceased to the Hospital. P.Ws.6 and 7 turned hostile.

6. P.W.8 is the Judicial Magistrate No.III, Cuddalore. He recorded the dying declaration of the deceased. P.W.9, the Doctor working in the Government Hospital, Cuddalore, admitted the deceased in the hospital, gave wound certificate, conducted postmortem autopsy on the dead body and given postmortem certificate. P.Ws.10,11 and 12 turned hostile. P.W.13 is the Head Constable working in the respondent police station. He handed over the alteration report to the Judicial Magistrate Court. P.W.14 is another Head Constable working in the respondent police station. He identified the dead body for postmortem and after postmortem he handed over the dead body to the relatives. P.W.15 is the Inspector of Police, working in the respondent police station, based on the statement of the deceased, he registered a case and prepared first information report, arrested the accused remanded them to judicial custody, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witness and no document was marked on his side.

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

9. I have heard Mr.R.Rajan, 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.

10. There are four eye witnesses in this case. P.W.1 is the minor son of the deceased. P.W.2 is the brother of the deceased. P.W.3 is the wife of P.W.2. P.W.5 is the husband of the deceased. It is the consistent evidence of all the witnesses that there was a quarrel between the deceased, P.W.5 and one Iyemunnisha, at that time all the accused came there and they beaten P.W.5 and then they have scolded the deceased with filthy language and insulted her, immediately, the deceased went inside the house and brought kerosene, poured on her and searching for match box, at that time the appellant herein lighted the match stick and throw it the same on her

and set fire on her.

11. The occurrence took place in the house of the deceased, P.W.1 and 5 being son and husband of the deceased, and their presence in the house is natural. P.W.2, is the brother of the deceased and P.W.3 is the wife of P.W.2. According to them, they came to the deceased house at the time of occurrence. Even though they are all interested witnesses, their evidence is consistent and their presence in the scene of occurrence is natural, another evidence also trustworthy and there is no reason to disbelieve their evidence.

12. Apart from that there are three dying declarations in this case. After the occurrence, the deceased was taken to the Government Hospital, Cuddalore, and P.W.9, the Doctor, working in the Government Hospital, Cuddalore, admitted the deceased in the Hospital at about 10.15 p.m., At that time the deceased was conscious and told the Doctor that only the first accused set fire on her and to that effect the Doctor also issued Accident Register Ex.P3. In the Accident Register, it is mentioned that alleged to have been set fire by one known person (Sait) on 10.08.2003 at about 9.00 p.m., at her house. P.W.8, the Judicial Magistrate No.III, Cuddalore, on receipt of the intimation, came to the Hospital at about 11.25 p.m., and after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, and obtained a certificate from the Doctor, and after putting necessary question recorded the dying declaration of the deceased, wherein, the deceased had stated that there was a quarrel between her husband and one Iyemunnisha, at that time the appellant and other accused attacked her husband/P.W.5 and they have also attacked her and then the first accused brought the kerosene and poured on her and set fire on her. Subsequently, P.W.14, the Inspector of Police, working in the respondent police station, on receipt of the intimation from the Hospital, he proceeded to the Hospital and recorded the statement of the deceased. At that time, the deceased was conscious, wherein, she has stated that since all the accused scolded her with filthy language feeling insulter her, she went inside the house and brought kerosene and poured on her and at that time the first accused lighted the match stick and throw it and set her on fire. Even though there is minor discrepancy in the dying declaration, the deceased consistently said that it is only this appellant/accused set fire on her. So far as the Judicial dying declaration before Judicial Magistrate, after observing all the formalities, and being satisfied that the deceased was conscious and in fit state of mind, recording the dying declaration, wherein, the deceased has clearly implicated this accused. Hence, I find no reason to disbelieve the dying declarations. In the above circumstances, I am of the considered view that the prosecution has clearly established that only this appellant/accused set fire on the deceased.

13. Now, the next question is "what was the offence that the accused has committed by the said Act?". I have already narrated that in all the dying declaration of the deceased, the deceased has consistently stated that there was a quarrel between P.W.5 and one Iyemunnisha, and at that time the accused came there and they have beaten her husband and they have also scolded her with filthy language and immediately she went inside the house and brought the kerosene and she herself poured kerosene on her and searched for match box, at that time the first accused came there, and out of sudden provocation, the accused lost his mental balance and lighted the match stick and throw it the same on her, the deceased set fire on her and got fire on her. Hence the act of the appellant fall under Section 304(ii) IPC and the trial Court rightly convicted him under Section 304(ii) IPC and I find no reason to interfere with the well considered judgment of the Court below. So far as the conviction under Section 147 IPC is concerned, there is no material available to show that the appellant along with other accused formed an unlawfull assembly and he cannot be convicted with the offence under Section 147 IPC and conviction is liable to be set aside.

14. In respect of the quantum of punishment is concerned, it is not a premeditated murder, the occurrence had taken place in a quarrel between the accused and the deceased and it was only the deceased poured kerosene on her and asked him for a match box at that time, out of sudden provocation, the occurrence had taken place. 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.

15. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence under Sections 147 IPC is set aside and conviction for the offence under Section 304(ii) IPC is confirmed and the appellant is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of imprisonment already undergone by the appellant/accused shall be given set off as required under Section 428 Cr.P.C. The bail bond already executed by the appellant is cancelled. The learned Additional District and Sessions Judge, (Fast Track Court No.II), Cuddalore is directed to secure the custody of the appellant immediately and send him to the prison to undergo the remaining portion of sentence as imposed by this Court.

rrg

Sd/-

Assistant Registrar(ccc)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
(Fast Track Court No.II),
Cuddalore.

2.The Inspector of Police,
Kurinjipadi Police Station,
Kurinjipadi.

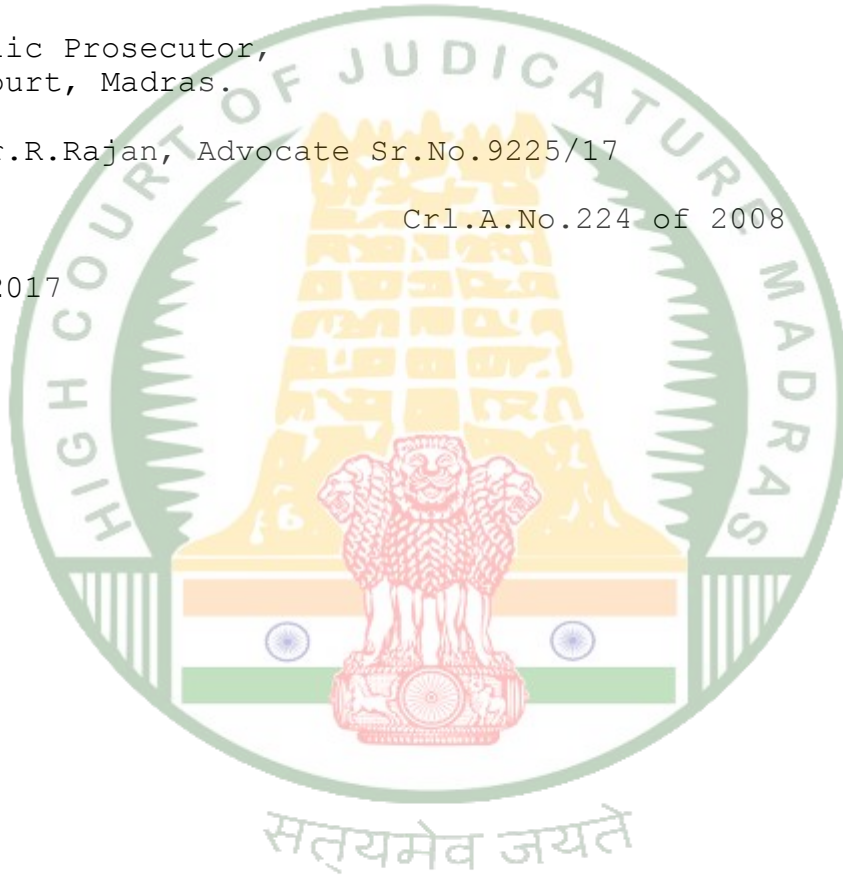
3.The Superintendent,
Central Prison, Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.R.Rajan, Advocate Sr.No.9225/17

Crl.A.No.224 of 2008

NRI (CO)
sm:18.12.2017



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