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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED : 30.11.2017

PRONOUNCED: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A[MD].No.375 of 2016

Asaimani : Appellant

Vs.

The Inspector of Police,  
Thanjavur East Police Station,  
Thanjavur.

: Respondent

**PRAYER:** Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 03.06.2016 made in S.C.No.147 of 2013, on the file of the Makila Court [Fast Track Court] and Sessions Judge at Thanjavur.

For Appellant : Mr.M.R.R.Sivasubramanian

For Respondent : Mr.C.Ramesh  
Additional Public Prosecutor

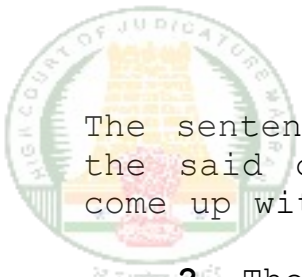
#### JUDGMENT

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**R.SUBBIAH, J.**

The appellant is the sole accused in S.C.No.147 of 2013, on the file of the Makila Court [Fast Track Court] and Sessions Judge at Thanjavur. He stood charged for the offence punishable under Section 302 of the Indian Penal Code [two counts]. By Judgment dated 03.06.2016, the Trial Court has convicted the accused and sentenced him, as detailed below:-

| Section of Law       | Sentence of imprisonment          | Fine amount                                                               |
|----------------------|-----------------------------------|---------------------------------------------------------------------------|
| 302 IPC [two counts] | To undergo imprisonment for life. | Rs.1,000/- each in default to undergo rigorous imprisonment for one year. |



The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the accused/the appellant has come up with this Criminal Appeal.

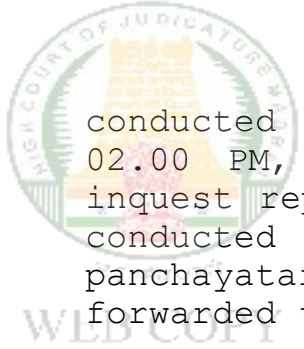
2. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, are one Mrs.Kalyani and Minor Rajasuriya, [hereinafter referred to as "D-1 and D-2" respectively]. The accused is the husband of D-1 and the father of D-2. The accused is a coolie by profession. The accused was residing at Door No.24, Pudhukurichi, Thanjavur, along with his wife and three children, namely, Vijay, Manickam and Rajasuriya. On 27.02.2013, at about 11.00 PM, there was a quarrel between D-1 and her father-in-law. This was questioned by the accused, who, in turn, had scolded D-1. At the end of the quarrel, the accused pushed D-1 inside the kitchen, took out a Kerosene Can, which was lying by the side of the kitchen, poured kerosene on D-1 and attempted to set fire by lighting a match stick twice. PW-1, who is the first son of the accused, prevented him by extinguishing the fire, which emanated from the lighted match stick. However, lastly, the accused set D1 on fire with a lighted match stick. Then, the accused took out a cycle, which was lying by the side of the kitchen and attacked D-1 on her leg. Inadvertently, D-1 fell down on D-2, the third son of the deceased, who was sleeping on the floor of the kitchen. D-2 was also found engulfed in flames.

2.2. D-2 with burn injuries rushed to the house of PW-3, the brother of the accused, by weeping and informed PW-3 about the occurrence. PW-3 immediately rushed to the place of occurrence and found D-1 lying with burn injuries and called 108 Ambulance. Since 108 Ambulance did not arrive on time, D-1 and D-2 were taken in a TATA Ace Vehicle and admitted in Government Hospital, Thanjavur. On 28.02.2013, at 06.00 AM, D-2 died in the Government Hospital, Thanjavur. On the same day, at 10.30 AM, D-1 died. Thereafter, PW-3 went to Thanjavur East Police Station and made a complaint.

2.3. PW-11, on receipt of complaint, registered a case in Crime No.168 of 2013 under Section 174 of the Code of Criminal Procedure [suspicious death]. EX-P3 is the complaint and EX-P8 is the First Information Report. Then, he forwarded both the documents to the Tahsildar, Thanjavur and also to the Court and handed over the investigation to the Inspector of Police.

2.4. Taking up the case for investigation, at 11.30 AM, on 28.02.2013, PW-15 proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P4] and a Rough Sketch [EX-P15] showing the place of occurrence in the presence of PW-4 and another witness. He recovered a Plastic Cane with capacity of 10 litre [EX-P2], Match Box [MO-3], burned Match Stick, numbering five [MO-4 series] under separate mahazers. Then, on the same day, he



conducted inquest on the dead body of D-1 between 12.30 PM and 02.00 PM, in the presence of the panchayatars. EX-P16 is the inquest report of D-1. Then, between 02.00 PM and 03.30 PM, PW-15 conducted inquest on the body of D-2 in the presence of the same panchayatars. EX-P17 is the inquest report of D-2. Then, he forwarded the dead bodies for postmortem.

**2.5.** PW-12 - Dr.R.Meignanaguru conducted autopsy on the body of D-1, on 01.03.2013. EX-P9 is the postmortem certificate of D-1. He noticed the following burn injuries:-

"1.Varying degree of burns all over the body except both face.

2. Cut down wound right legs present".

He gave opinion that D-1 would appear to have died due to effects and complications of extensive burns.

**2.6.** On the same day, at 11.10 AM, PW-12 conducted autopsy on the dead body of D-2. EX-P10 is the postmortem certificate of D-2. He noticed the following burn injuries:-

"1. Varying degree of extensive burns all over the body except both lower legs and feet and both upper hands.

2. Cut down wound in right leg".

He gave opinion that D-2 would appear to have died due to effects and complications of extensive burns.

**2.7.** On 28.02.2013, PW-15 examined PW-1 to PW-4 and recorded their statements. Since it came to be known, during investigation, that the accused poured kerosene on D-1 and set her on fire, PW-15 altered the case into one under Section 302 of the Indian Penal Code. EX-P18 is the alteration report. On 01.03.2013, he examined PW-5, PW-6 and other witnesses and recorded their statements. On 06.03.2013, PW-15 made a request to the learned Judicial Magistrate to record the depositions of PW-1 and PW-2 under Section 164 of the Code of Criminal Procedure.

**2.8.** On 11.03.2013, at 11.00 AM, he went to the Government Hospital, Thanjavur, wherein the accused was taking treatment and arrested him. On such arrest, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden the BSA cycle [MO-1]. In pursuance of the same, the accused took the police and the witnesses to the backside of his house and produced the cycle. PW-15 recovered the same under a mahazer. On returning to the Police Station, PW-15 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court.

**2.9.** Continuing the investigation, PW-17 took up the case for investigation. He went to the Government Hospital, Thanjavur, examined the doctors, who conducted autopsy on the dead bodies of



D-1 and D-2 and received the postmortem certificates. On completing the investigation, he laid charge sheet against the accused, on 02.05.2013.

**2.10.** Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 17 witnesses were examined, 18 documents and five material objects were marked.

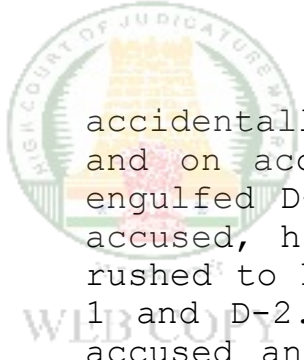
**2.11.** When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On his side, his mother was examined as DW-1. However, he did not choose to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

**3.** The learned counsel appearing for the appellant would submit that in order to prove the alleged crime, the prosecution mainly relies upon the eye-witness account of PW-1, the elder son of the deceased. According to the learned counsel, the evidence of PW-1 is not believable, as PW-1 is highly interested to the case of the prosecution. Except PW-1, no other independent witness was examined to prove the case of the prosecution. Further, the learned counsel appearing for the appellant would submit that the presence of PW-1, at the time of occurrence, is highly doubtful. If he had been present at the time of occurrence, he would have taken steps to prevent the accused from setting D-1 on fire.

**4.** The learned counsel would further submit that PW-16, the second son of the deceased, in his evidence, has stated that on 28.02.2013, he along with his brother - PW-1 went to the house of his senior paternal uncle and slept there, which, according to the learned counsel, would show that PW-1 was not at all present at the time of occurrence.

**5.** The learned counsel for the appellant would also submit that the alleged occurrence, in this case, was on 27.02.2013 at 11.00 PM. However, the complaint was made on 28.02.2013, at 10.30 AM. Thus, there is an inordinate delay of 11.30 hours in preferring the complaint, which creates enormous doubt in the case of the prosecution.

**6.** The learned counsel for the appellant would also submit that before the Trial Court, it is the defence of the accused that when D-1 was preparing food with the help of a Kerosene Stove,



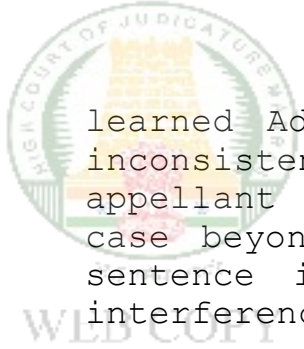
accidentally, the Kerosene Stove caught fire and fire engulfed D-1 and on account of the same, she fell down on D-2 and the fire engulfed D-2 also. In order to prove the same, on the side of the accused, his mother was examined as DW-1. She has stated that D-2 rushed to her house with flames and told that the fire engulfed D-1 and D-2. On hearing the same, DW-1, PW-3, the brother of the accused and the other witnesses came to the house of the accused and found D-1 lying on the floor of the house with flames and also the accused with flames. In the same occurrence, the accused had also sustained burn injuries on his head, face, both upper limbs neck and chest.

7. The learned counsel appearing for the appellant would also submit that at the earliest point of time, when D-1 and D-2 were admitted in the Government Hospital, Thanjavur, they have stated, in one voice that while D-1 was cooking in a kerosene stove, accidentally, the kerosene stove caught fire and engulfed her, which would be evident from EX-P12 to EX-P14, the Accident Registers issued by the doctor. This being the earliest statement, which amounts to dying declaration and since there was no chance for any prompting or tutoring, according to the learned counsel, the same should be given much weightage of.

8. The learned counsel for the appellant would also submit that the deposition given by PW-1 under Section 164 of the Code of Criminal Procedure, which was recorded by the learned Judicial Magistrate under EX-P1, cannot be relied upon, as it is the result of prompting and tutoring by the relatives of PW-1. The learned counsel would also submit that PW-1, during cross-examination, has stated that as directed by his uncle, he had deposed and he was tutored by his uncle, which would go to the very root of the case of the prosecution. Thus, from and out of the evidence of DW-1 and pointing out certain contradictions in the case of the prosecution, the learned counsel appearing for the appellant would try to make out a case that while preparing food with the help of Kerosene Stove, accidentally, the Kerosene Stove caught fire and engulfed D-1 and D-2. For all these reasons, according to the learned counsel, the entire case of the prosecution should be disbelieved and thus, the appellant is entitled for acquittal.

9. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the statements given by D-1 and D-2 to the doctor, though are dying declarations, cannot be given any weightage of, because when the said statements were made to the doctor, PW-3, the brother of the accused was by her side. May be out of fear, D-1 would have made such a false statement to the doctor in order to save her husband. According to him, EX-P1, the deposition given by PW-1 before the

Sealed and signed by the Judicial Magistrate, No.II, Thanjavur, is duly corroborated by the evidence of PW-1. Thus, according to the

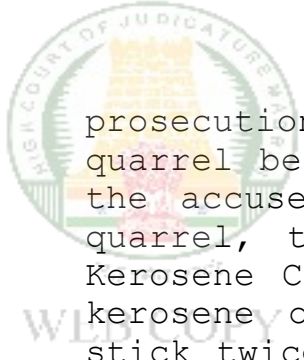


learned Additional Public Prosecutor, the discrepancies and the inconsistencies pointed out by the learned counsel for the appellant are immaterial. The prosecution has, thus, proved the case beyond reasonable doubts and therefore, the conviction and sentence imposed on the accused by the Trial Court needs no interference at the hands of this Court.

**10.** We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

**11.** There is no dispute that the accused and the deceased were living together as husband and wife along with their three children at Door No.24, Pudhukurichi, Thanjavur. The prosecution, in order to prove the charges, mainly relies on the evidence of PW-1, the elder son of the deceased and the deposition recorded by the learned Judicial Magistrate No.II, Thanjavur, under Section 164 of the Code of Criminal Procedure. PW-1 has spoken about the entire occurrence in a vivid manner. The presence of PW-1, at the time of occurrence, cannot be doubted at all. In the said deposition, recorded under Section 164 of the Code of Criminal Procedure, PW-1 has narrated the entire occurrence without any contradiction. At this juncture, we have to state that we are conscious of the legal proposition that it is not quantity of the evidence, but the quality that matters. In a case of this nature, when the prosecution relies only on the evidence of solitary witness, if the evidence of the said witness inspires the fullest confidence of the Court, then, there is no legal impediment for the Court to act upon the said solitary evidence and to convict the accused. In this case, the evidence of PW-1 fully inspires the confidence of the Court. Moreover, the evidence of PW-1 is duly corroborated by the deposition recorded by the learned Judicial Magistrate No.II, Thanjavur.

**12.** Now, coming to EX-P11 and EX-P12, the Accident Registers, issued by PW-13, Dr.S.Velmurugan, Assistant Surgeon, Government Medical College Hospital, Thanjavur, in our considered view, the above statements by D-1 and D-2 cannot be given any weightage of, because, when the said statements were made, PW-3, the brother of the accused was by her side. Thus, there is every possibility for PW-3 to have tutored D-1 to give such a false statement. Thus, in our considered view and as rightly pointed out by the learned Additional Public Prosecutor, may be out of fear, D-1 would have made such a false statement to the doctor in order to save her husband, as he has to take care of her two children. Though it may be true that D-2 has made a statement that while D-1 was preparing food with the help of Kerosene Stove, accidentally, the stove engulfed D-1, on a perusal of the eye-witness account of PW-1 and EX-P1, it has been clearly established by the



prosecution that On 27.02.2013, at about 11.00 PM, there was a quarrel between D-1 and her father-in-law. This was questioned by the accused, who, in turn, had scolded D-1. At the end of the quarrel, the accused pushed D-1 inside the kitchen, took out a Kerosene Can, which was lying by the side of the kitchen, poured kerosene on D-1 and attempted to set fire by lighting a match stick twice. PW-1, who is the first son of the accused, prevented the accused by extinguishing the fire, which emanated from the lighted match stick. However, lastly, the accused set D-1 on fire with a lighted match stick. Then, the accused took out a cycle, which was lying by the side of the kitchen and attacked D-1 on her leg. Inadvertently, D-1 fell down on D-2, the third son of the deceased, who was sleeping on the floor of the kitchen. The fire engulfed D-2 also. Thus, from the evidence of PW-1 and the deposition given by PW-1 under Section 164 of the Code of Criminal Procedure, before the learned Judicial Magistrate No.II, Thanjavur, the prosecution has further established that D-2 was not aware of the occurrence, as he was sleeping at the time of occurrence. Thus, there would have been no occasion for D-2 to say as to what had happened in the kitchen. In our considered opinion too, D-2, being a minor, aged about seven years, would have slept well, without knowing the occurrence. That was the main reason why, he would have stated so.

**13.** Though PW-1 has been subjected to lengthy cross-examination, except a very vague statement that he was tutored by his uncle, nothing has been brought on record so as to disbelieve his version. Thus, we are unable to attach any importance to the very vague statement made by PW-1, during cross-examination, that he was tutored by his uncle to depose against the accused, since we found that it would not amount to tutoring or refreshing the memory of the young child. PW-1 is an eleven years old boy. After all, the accused is none other than the father of PW-1 and thus, he would have no grudge over the accused to depose against him. In our considered view, the statement recorded by the learned Judicial Magistrate No.II, Thanjavur, in the instant case, was not as a result of any tutoring and the same needs to be given utmost weightage.

**14.** The issue as to whether the Accident Register issued by a doctor could be relied upon came up for consideration before the Hon'ble Supreme Court in the case of **P.Babu and others Vs. State of A.P** reported in **1994 (1) SCC 388**, wherein the Hon'ble Supreme Court has held as follows:-

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to statement. At that stage, the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured person about the actual assailants and the inquiry would be confined as to how he received the injuries



namely the weapons used etc".

**15.** Applying the above dictum laid down by the Hon'ble Supreme Court to the case on hand, if we analyze the facts of the present case, in our considered view, no significance could be attached to the Accident Registers issued by PW-13. Furthermore, under Section 145 of the Indian Evidence Act, 1872, the statement made by D-1 and D-2 to the doctor, being earlier statements, could be used by the defence to contradict them. The said statement cannot be treated as substantive evidence. In the instant case, the evidence of PW-1 is cogent and convincing and strongly establishes the guilt of the accused and thus, we cannot attach any importance to the said statement allegedly made by D-1 and D-2 to the doctor.

**16.** Now, turning to the submission made by the learned counsel for the appellant, by drawing the attention of this Court to the evidence of PW-16, the second son of the deceased that PW-16 has stated that on 28.02.2013, he along with his brother - PW-1 went to the house of his senior paternal uncle and slept there, in our considered view, even as per the complaint given by PW-3, the brother of the accused, PW-16 alone went to the house of PW-3 and PW-1 was at the house of the deceased. Thus, the argument advanced by the learned counsel for the appellant in this regard is rejected.

**17.** Now, coming to the submission of the learned counsel for the appellant that there is an inordinate delay in preferring the complaint and registering First Information Report, in our considered view, the alleged occurrence was at 11.00 PM, on 27.02.2013 and D-1 and D-2 were admitted in the Government Hospital, Thanjavur and died at 06.00 AM and 10.30 AM, on 28.02.2013 and thereafter only, PW-3 went to the Police Station and made complaint. There was no suggestion put forth to PW-15, the Investigating Officer in this regard and thus, the said submission cannot be accepted.

**18.** As we have already pointed out, it is not in dispute that the accused and the deceased were living together as husband and wife along with their three children at Door No.24, Pudhukurichi, Thanjavur. It is in evidence that on the fateful day, the accused, D-1, D-2 and PW-1 were alone at their house. If really the occurrence had taken place, accidentally, as it is projected by the defence and the stove caught fire, while D-1 was preparing food and the fire engulfed D-1, on account of which fire engulfed D-2 also and had it been true that the accused had no intention to cause the death of D-1, he would have certainly made all efforts to save D-1, his wife and D-2, his minor child, in which he would have, certainly, sustained more percentage of burn injuries, since  
<https://hcservices.ecourts.gov.in/hcservices/>  
even as per the evidence given by PW-3, who is the brother of the accused, when he rushed to the place of occurrence, he found the

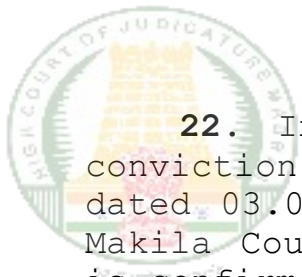


accused inside the house with minor burn injuries. The Accident Register issued by the doctor, who treated the accused at the time when he was admitted in the hospital, would also show that the accused had sustained only minor burn injuries on his head, face, both upper limbs neck and chest, whereas, the doctor, who conducted autopsy on the dead bodies of D-1 and D-2, found 95% of burn injuries. No ordinary man in the world would be an audience to such a heart burning incident, without taking any effort to save the life of his wife and the minor child. In our considered view, the reason for sustaining minor burn injuries on the accused is that D-1 would have tried to catch the accused, without tolerating the flames, due to which, the accused would have sustained certain minor burn injuries. Thus, from and out of the conduct of the accused, it is presumable under Section 114 of the Indian Evidence Act, 1872, that it was he, who alone poured kerosene on D-1 and set her on fire. No explanation whatsoever has been given by the accused nor any evidence was placed on record to rebut the presumption under Section 114 of the Indian Evidence Act, 1882.

**19.** At this juncture, we have to necessarily state that the accused had intention to cause the death of the deceased. The very fact that the accused poured kerosene on D-1 and attempted to set fire with a lighted match stick twice and thereafter, the accused set D1 on fire for the third time to D-1 would clearly go to show that he had a definite intention to cause the death of D-1. Assuming for a moment that the accused had no intention to cause the death, undoubtedly, he had intention to cause bodily injury, which is sufficient in the ordinary course of nature to cause the death. In the instant case, the burn injuries, measuring 95% on the body of D-1, were intended injuries by the accused. These injuries, by itself, would be sufficient in the ordinary course of nature to cause the death of D-1 and D-2.

**20.** From the evidence of PW-1, which draws corroboration from EX-P1, the prosecution has clearly proved that it was this accused, who alone poured kerosene on D-1 and set her on fire and attacked D-1 with cycle on her leg, which resulted D-1 in falling down on D-2, who also sustained 95% burn injuries and died. Thus, in our considered view, the prosecution has clearly proved the case beyond reasonable doubt and so, the conviction and sentence imposed on the accused is liable to be confirmed.

**21.** Now, turning to the quantum of punishment, we do not find any reason to interfere with the same, as the Trial Court has imposed an appropriate punishment, which is proportionate to the gravity of the offences as well as the mitigating circumstances. Thus, there is no reason to interfere with the quantum of



22. In the result, this Criminal Appeal is dismissed; the conviction and sentence imposed on the appellant by Judgment dated 03.06.2016 made in S.C.No.147 of 2013, on the file of the Makila Court [Fast Track Court] and Sessions Judge at Thanjavur, is confirmed.

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Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,  
Thanjavur East Police Station,  
Thanjavur.

2. The Makila Court [Fast Track Court]  
and Sessions Judge at Thanjavur.

3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

4. The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 cc TO Mr.M.R.R.Sivasubramanian, Advocate in SR No. 36744

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AE/KK/SAR1/11.01.2018/10P/6C

**JUDGMENT MADE IN  
CRL.A[MD].No.375 of 2016  
21.12.2017**