

BAIL SLIP

That the accused namely, S.Vinayagam, S/o,Settlu aged 35 years sole accused in S.C.No.304/2009 dated 05.08.2010 on the file of the Additional District and Sessions Court-cum-Fast Track Court, Tirupattur, was released on bail in CRL MP 1 of 2011 in CRL A No. 31 of 2011 dated 28.01.2011 on the file of this Honourable Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.11.2018

PRONOUNCED ON: 10.12.2018

CORAM :

THE HON'BLE MR.JUSTICE P.N. PRAKASH

Crl.A. No.31 of 2011

S. Vinayagam ... Appellant/Accused

vs.

State by
Inspector of Police
Vaniyambadi Town Circle
I/c Vaniyambadi Taluk Police Station
Vellore District
(Cr. No.214 of 2009)

... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to set aside the conviction and sentence imposed on the appellant vide judgment dated 05.08.2010 in S.C. No.304 of 2009 on the file of the Additional District and Sessions Court-cum-Fast Track Court, Tirupattur, Vellore District.

For appellant : Mr. V. Krishnamoorthy

For respondent : Mrs. Kritika Kamal P.
Govt. Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been preferred seeking to set aside the conviction and sentence imposed on the accused vide judgment dated 05.08.2010 in S.C. No.304 of 2009 on the file of the Additional District and Sessions Court-cum-Fast Track Court, Tirupattur, Vellore District.

2 For the sake of convenience, the deceased, viz., Saritha and the accused, viz., Vinayagam, will be referred to by their name.

3 The case of the prosecution is as under:

3.1 The incident in this case occurred on 14.02.2009. Two years prior to the date of occurrence, Saritha got married to Vinayagam and theirs was a love marriage. They were living in Ilayanagaram. Vinayagam was working as Painter in Madurai and would go for work daily. Suspecting his wife's fidelity, he would pick quarrels with her frequently and assault her.

3.2 On the fateful day, viz., 14.02.2009, at 8.30 p.m., it is alleged that he doused her with kerosene and set her ablaze. Saritha was in flames and unable to bear the pain, she rushed out of her house and came to the street and the same was witnessed by her neighbours, viz., Gnanam (P.W.4), Maheswari (P.W.5), Rohini (P.W.6) and Govindasamy (P.W.7). Venkatesan (P.W.8) informed Saritha's brother Umapathy (P.W.1), who was living nearby and he immediately rushed her to the hospital at Vaniyambadi by an auto rickshaw, where, she was admitted as in-patient. On intimation by the hospital authorities, Chennaiyan (P.W.16), Sub Inspector of Police, went there and recorded the statement of Saritha, based on which, he registered a case in Cr. No.214 of 2009 on 15.02.2009 under Section 307 IPC against Vinayagam and prepared the printed FIR. The complaint and the FIR reached the jurisdictional Magistrate on 16.02.2009 at 12.30 p.m.

3.3 The investigation of the case was taken over by Vincent Paul, Inspector of Police (P.W.17). In the meantime, a requisition was given to Mr. A. Murugan, Judicial Magistrate (P.W.12), to record the dying declaration of Saritha and accordingly, he came to the hospital on 15.02.2009 at 12.15 a.m. and recorded her dying declaration in the presence of the Assistant Surgeon, Vaniyambadi, who certified to the mental fitness of Saritha, to give statement.

3.4 Vincent Paul (P.W.17) went to the place of occurrence and prepared the observation mahazar (Ex.P.1) and the rough sketch (Ex.P.20). At the place of occurrence, he seized a ten-litre kerosene can (M.O.1), matchbox (M.O.2) under the cover of mahazar (Ex.P.2) in the presence of Lakshmanan (P.W.9) and Sathyaraj (not examined). He recorded the statements of witnesses, viz., Umapathy (P.W.1), Loganathan (P.W.3), Gnanam (P.W.4), Maheswari (P.W.5), Rohini (P.W.6), Govindasamy (P.W.7), Venkatesan (P.W.8), Lakshmanan (P.W.9) and Sathyaraj (not examined). On 17.02.2009, he received intimation from the

hospital that Saritha succumbed to the injuries and therefore, he filed an alteration report (Ex.P.21) altering the case from Section 307 IPC to one under Section 302 IPC and proceeded to the Government Hospital, Vellore, where, Saritha had died and conducted inquest in the presence of Panchayatdars and prepared the inquest report (Ex.P.22). He despatched Saritha's body through one Chellapandiyan, Head Constable for post-mortem. He recorded the further statement of the witnesses and arranged to have the statements of some of the important witnesses, including Loganathan (P.W.3), by a Magistrate under Section 164 Cr.P.C. Vinayagam surrendered before the Judicial Magistrate, Ambur, on 18.02.2009 and on intimation, the Investigating Officer made the necessary application to arrest him and take him into custody. On 26.02.2009, he took Vinayagam into police custody and on the disclosure made by Vinayagam, a dark colour pant (M.O.3) and a checked half sleeve shirt (M.O.4) were seized under the cover of mahazar (Ex.P.4) on 26.02.2009 in the presence of Mayilainathan, Village Administrative Officer (P.W.10) and Selvi, Village Administrative Officer (not examined). The seized articles were sent to the District Munsif-cum-Judicial Magistrate, Vaniyambadi in Form No.95 - I & II (Exs.P.16 and P.17 respectively) with a requisition to send the same to the Tamil Nadu Forensic Science Laboratory, for examination and report. After obtaining the post-mortem report and recording the statement of the doctor and receiving the report from the Tamil Nadu Forensic Science Laboratory, he completed the investigation and filed final report on 12.03.2009 before the District Munsif-cum-Judicial Magistrate, Vaniyambadi, which was taken on file in P.R.C. No.4 of 2009 for the offences under Sections 302 and 498-A IPC.

3.5 On the appearance of Vinayagam, provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.304 of 2009 and was made over to the Additional District and Sessions Judge (Fast Track Court), Tiruppur, for trial.

3.6 The Trial Court framed charges for the offences under Section 498-A and 302 IPC and when Vinayagam was questioned, he pleaded 'not guilty'. To prove their case, the prosecution examined 17 witnesses and marked 25 exhibits, besides four material objects. Vinayagam was questioned about the incriminating circumstances which appeared against him under Section 313 Cr.P.C. and he denied the same. No witness was examined nor was any document marked on the side of Vinayagam.

3.7 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 05.08.2010, acquitted Vinayagam under Section 498-A IPC and Section 302 IPC,

but, convicted him under Section 304 (II) IPC and sentenced him to undergo 7 years rigorous imprisonment and pay a fine of Rs.3,000/-, in default to undergo six months rigorous imprisonment, challenging which, Vinayagam is before this Court.

4 Heard Mr. V. Krishnamoorthy, learned counsel for Vinayagam and Mrs. Kritika Kamal P., learned Government Advocate (Crl. Side) appearing for the respondent - State.

5 The learned counsel for Vinayagam made the following submissions:

a Loganathan (P.W.3), who was present in the house at the time of occurrence, had turned hostile and has deposed that Saritha committed suicide by self-immolation on account of sudden quarrel and that it was not Vinayagam who had set fire to her;

b Vinayagam came to the place of occurrence and on finding his wife Saritha in flames, he tried to take her by auto rickshaw to the hospital, however, her brother Umapathy (P.W.1) prevented him;

c Though Umapathy (P.W.1) has stated in his evidence that he had taken Saritha to the hospital, the copy of the accident register (Ex.P.10) shows the name of one Mohan and that the said Mohan was not examined by the prosecution;

d The dying declarations given by Saritha are tainted ones, inasmuch as, her relatives were around her and on their instance, she has implicated Vinayagam;

e The recovery of pant and shirt (M.Os.3 and 4 respectively) worn by Vinayagam is not pursuant to the discovery under Section 27 of the Evidence Act, which is manifest from the evidence of Mayilainathan, (P.W.10);

f Since Saritha had died within seven years from the date of marriage, inquest should have been conducted by the Revenue Divisional Officer and not by the police; and

g Section 164 Cr.P.C. statements of witnesses have not been marked.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forward by the learned counsel for Vinayagam.

7 This Court gave its anxious consideration to the rival submissions and plodded through the materials available on record.

8 It is true that the sole eyewitness in this case, viz., Loganathan (P.W.3) turned hostile and the neighbours, viz., P.Ws. 4 to 7 also turned hostile. Therefore, this Court is left with the three dying declarations of Saritha and other circumstantial evidence to decide the culpability or otherwise of Vinayagam.

9 Umapathy (P.W.1), the brother of Saritha, in his evidence, has stated that Saritha got married to Vinayagam about two years prior to the incident and theirs was a love marriage; after marriage, they were residing in Elayanagaram; Vinayagam would go to Madurai for painting work; after marriage, Saritha and Vinayagam were not living happily and there were a lot of quarrels between them, about which, Saritha would complain to her parents; Vinayagam would abuse her for not going for job; on 14.02.2009, around 8.00 p.m., when he was in his house, he received information from one Venkatesan (P.W.8) about the incident and he rushed to Saritha's house and took her to the Government Hospital, Vaniyambadi, three days after which, she died.

10 In the cross-examination, Umapathy (P.W.1) has stated that his house is just two kms. away from Saritha's house and he came by his motorcycle to the place of occurrence and called the auto rickshaw over phone. He has further stated that the auto rickshaw came in 15 minutes. To the pointed suggestion by the defence that it was Vinayagam who poured water on Saritha and extinguished fire and brought auto and when Vinayagam wanted to take her to the hospital, he was prevented by Umapathy (P.W.1), he denied the same.

11 Venkatesan (P.W.8), in his evidence, has stated that he lives about 200 feet away from Saritha's house and on coming to know of the incident, he contacted Umapathy (P.W.1) over phone and that he had not seen the incident.

12 Ramakrishnan (P.W.2), Saritha's father, has stated in his evidence that he was living about two kms. away from Saritha's house and on the date of incident, he received a phone call around 9.30 p.m. from Vinayagam, who told him that Saritha had self-immolated, on coming to know of which, he rushed to the place, but, did not find Vinayagam anywhere there; his son (Umapathy-P.W.1) had come a little earlier and had taken Saritha to the hospital; he (P.W.2) went to the hospital and there, Saritha told him that Vinayagam was searching for his bike key and when she told him that she did not know where it was, he got wild at her, abused her and set fire to her; and she died three days later.

13 In the cross-examination, he has stated that Vinayagam and Saritha were in love and they got married; initially, he did not approve of the marriage, but, later, he accepted it. He denied the suggestion that after marriage, Saritha had never come to her parental home since her marriage was not accepted by them.

14 As rightly contended by Mr. Krishnamoorthy, there are only four pieces of evidence in this case, viz.,

- a Saritha's dying declarations;
- b Evidence of Loganathan (P.W.3); and
- c Circumstances relating to recovery of pant (M.O.3) and shirt (M.O.4)
- d Conduct of Vinayagam

15 Loganathan (P.W.3) was 14 years old when he gave evidence before the Trial Court on 05.07.2010. Therefore, he must have been 13 years old when the incident took place. The Section 164 Cr.P.C. statement of Loganathan (P.W.3) was recorded by the Magistrate, in which, he appears to have implicated Vinayagam. But, he was declared hostile as he did not support the prosecution case.

16 The Trial Court has posed the usual question to Loganathan (P.W.3) to satisfy itself about his capacity to tender evidence and after having been satisfied, his evidence has been recorded.

17 Loganathan (P.W.3) has stated in his evidence that Vinayagam is his maternal uncle; his parents were living in Poongulam; right from his childhood, he grew in Vinayagam's house; Vinayagam was working as Painter and would go out of town for work; there used to be frequent quarrels between Vinayagam and Saritha on trivial affairs; on the date of the incident, there was a quarrel between the duo, during which, Saritha repeatedly stated that she was going to die; Vinayagam tried his best to dissuade her and then, he left the house; thereafter, Saritha poured kerosene on herself and took a matchbox, seeing which, he snatched the matchbox from her and threw it out; she bolted the door and took another matchbox and set fire to herself; then, she herself opened the door and came out, seeing which, he rushed and brought his uncle Vinayagam and poured water on her; the neighbours also assembled there; Venkatesan (P.W.8) sent for an auto rickshaw, in which, she was taken to the hospital.

18 At that juncture, permission was sought by the prosecution to declare Loganathan (P.W.3) hostile. On permission being granted, the learned Public Prosecutor has mechanically put the averments in the previous statement to Loganathan

(P.W.3), which, the latter promptly denied. In the cross-examination by Vinayagam, Loganathan (P.W.3) has stated that it was his uncle Vinayagam, who brought the auto rickshaw and in the meantime, Umapathy (P.W.1) came there and prevented Vinayagam from accompanying Saritha to the hospital by assaulting and chasing him away; thereafter, his uncle Vinayagam telephoned to Saritha's parents and informed them about the incident.

19 As regards P.Ws.4 to 7, they are neighbours and have not witnessed the incident. Nothing turned out from their evidence either in support of the prosecution or defence. As alluded to above, this Court is now left with the three dying declarations of Saritha.

20 According to Umapathy (P.W.1), he came to the place of occurrence after he received information from Venkatesan (P.W.8) and called an auto rickshaw and took Saritha to the hospital. It is true that in the copy of the accident register (Ex.P.10), as against the column "Brought by", it is stated as "her brother Mohan". But, absence of the name of Umapathy (P.W.1) in the copy of the accident register (Ex.P.10) will not lead to the inference that he had not accompanied Saritha at all to the hospital. It is common knowledge that in the accident register copy, the attending physician will not write the names of all the attendants of a patient. Hence, absence of the name of Umapathy (P.W.1) in the copy of the Accident Register (Ex.P.10) is not fatal to the prosecution case. In fact, Vinayagam has taken a defence that when he wanted to accompany Saritha to the hospital, Umapathy (P.W.1) chased him away, which unmistakably implies that it was Umapathy (P.W.1), who took Saritha to the hospital. Dr.Meenakshi, (P.W.14), in her evidence, has stated that on 14.02.2009, around 9.20 p.m., while she was on duty in the Government Hospital, Vaniyambadi, Saritha, (aged 21 years) was brought by her brother Mohan with burn injuries; when she enquired Saritha, she told her that her husband had poured kerosene on her and set fire on her; she was conscious and was having 80% burn injuries. Dr. Meenakshi (P.W.14) has further stated that she immediately admitted Saritha and sent intimation to the Magistrate to record her statement. The copy of the accident register was marked through her as Ex.P.10, wherein, the statement of Saritha that her husband had poured kerosene on her and set her to fire, has been clearly stated. The time of occurrence of the incident has been stated as "about 8.30 p.m." in the copy of the accident register (Ex.P.10). In the cross-examination, Dr. Meenakshi (P.W.14) has reiterated that it was Saritha who told her about the manner in which she had sustained injuries and not the person who brought her to the hospital.

21 Mr. Krishnamoorthy submitted that with 80% burn injuries, Saritha would not have been in a position to give any statement to the doctor as projected by the prosecution. This submission does not cut ice with this Court, because, a person with 80% fresh burns, need not perforce lose his consciousness and become incapable of giving any statement. Ergo, this Court does not find any reason to disbelieve the evidence of Dr.Meenakshi (P.W.14) and the entries in the copy of the accident register (Ex.P.10) in respect of the manner in which Saritha suffered injuries.

22 Coming to the second dying declaration, viz., the statement of Saritha to Chennaian, Sub Inspector of Police (P.W.16), which formed the basis for registration of FIR, Saritha has vividly stated therein about her marriage to Vinayagam and his occupation. She has stated that her husband is a Painter and he would go for job and would not return home for 15 days and he would booze and come home and abuse her for not doing domestic chores properly; she had studied upto VIII standard and Vinayagam suspected her fidelity; on 14.02.2009, around 8 p.m., he scolded her for not working properly in the field and there is no happiness for him after marrying her; he searched for his bike key and shouted at her when she told him that she did not know where it was; he retorted saying "Believing you, I have even sent away my mother; you are not fit to be my wife and it is better that you die"; saying so, he took a can of kerosene and poured it on her and set fire to her; caught by the burning fire, she screamed and came to the road, seeing which, the neighbours gathered there. She has further stated that her sister-in-law's son Loganathan (P.W.3) was there at home. She has given the names of neighbours who gathered there, viz., Gnanam (P.W.4), Maheswari (P.W.5), Rohini (P.W.6) and Govindasamy (P.W.7). She has further stated that on coming to know of the incident, her brothers Umapathy (P.W.1) and Murugan (not examined) came to the spot and rushed her to the Government Hospital by auto rickshaw.

23 The third dying declaration of Saritha was recorded by Mr.Murugan, Judicial Magistrate (P.W.12) at 12.30 a.m. on 15.02.2009. In the evidence of Mr.Murugan, Judicial Magistrate (P.W.12), he has stated that he received intimation from the hospital at 11.30 p.m. on 14.02.2009 and reached there at 12.15 a.m. on 15.02.2009 and met Dr.Meenakshi (P.W.14), who was on duty then; on being identified and pursuant to the certificate given by Dr. Meenakshi (P.W.14) that Saritha was in a position to give statement, he recorded her statement, in which, she has stated that around 8.30 p.m., on account of a quarrel that ensued between her and Vinayagam, the latter poured kerosene on her and set fire to her. The dying declaration was marked as

Ex.P.6 which bears the following endorsement made by Dr. Meenakshi (P.W.14).

"The patient was conscious and in fit condition both mentally or physically and remained throughout the recording of dying declaration.

At the time of Dying Declaration, neither the patient attender nor the notice official were allowed. The Dying Declaration was recorded in my presence and to my hearing."

24 Mr. Krishnamoorthy's contention that the relatives were around Saritha and on their prompting, she had implicated Vinayagam in her dying declaration cannot hold water as could be seen from the endorsement made in the dying declaration (Ex.P.6) by Dr. Meenakshi (P.W.14) in the presence of Mr. Murugan, Judicial Magistrate (P.W.12). That apart, no suggestion has ever been put to Umapathy (P.W.1) or Ramakrishnan (P.W.2) or Mr. Murugan, Judicial Magistrate (P.W.12) or Dr. Meenakshi (P.W.14) that Saritha's relatives were present when her statement was being recorded and on their instance, she has implicated Vinayagam in the dying declaration. Thus, this Court finds that all the three dying declarations given by Saritha are compatible to one another and hence, this Court does not find any good reason to disbelieve the same.

25 Coming to the evidence of Loganathan (P.W.3), he is, concededly, the nephew of Vinayagam and he has himself stated that he grew in the house of Vinayagam right from his childhood. Perhaps, anticipating that he may turn hostile, the police have had his statement under Section 164 Cr.P.C. recorded. He appears to have supported the case of the prosecution in that statement, but, turned hostile in the witness box. It is common knowledge that a statement under Section 164 Cr.P.C. is merely a previous statement and is not substantive evidence. It can be used either to contradict or corroborate the testimony of the witness whilst he is in the witness box, apart from which, it does not carry any evidentiary value. Loganathan (P.W.3) has stated in his evidence that after Saritha set fire to herself, she came out of the house burning; he ran and brought Vinayagam to the place and together, they poured water on her; neighbours, viz., Gnanam (P.W.4), Maheswari (P.W.5) and Rohini (P.W.6) came there; neighbour Venkatesan (P.W.8) called auto rickshaw over phone; Umapathy (P.W.1) took Saritha to the hospital; and Umapathy (P.W.1) chased away Vinayagam. Vinayagam, in his written statement submitted under Section 313 Cr.P.C., has stated that when he wanted to take Saritha to the hospital, Umapathy (P.W.1) chased him away. However, Gnanam (P.W.4), Maheswari (P.W.5), Rohini (P.W.6) and Venkatesan (P.W.8) have all stated that on hearing the noise, they rushed to Saritha's

house and found her on fire. None of them has stated about the presence of Vinayagam in the spot. It is not known as to why these witnesses were declared hostile, because, even according to the prosecution, they came only during the commotion and were not eye witnesses. From the cross-examination by the Public Prosecutor, this Court is able to infer that they did not support the prosecution case with regard to the strained matrimonial relationship between Saritha and Vinayagam. Had Vinayagam poured water to extinguish the fire as stated by Loganathan (P.W.3), these witnesses would have stated that. The defence also did not put any question or suggestion to Gnamam (P.W.4), Maheswari (P.W.5) and Rohini (P.W.6) that Vinayagam was present there and he poured water on Saritha to extinguish the fire. Whereas, Ramakrishnan (P.W.2), has specifically stated that when he came to the spot, Vinayagam was not available. Vinayagam absconded and surrendered before the Judicial Magistrate, Ambur on 18.02.2009, though the jurisdictional Court was District Munsif-cum-Judicial Magistrate, Vaniyambadi. The abscondence of Vinayagam and his subsequent surrender before a Court, which has no jurisdiction, is relevant under Section 8 of the Evidence Act. All these circumstances cumulatively make this Court disbelieve the evidence of Loganathan (P.W.3) and believe the dying declarations of Saritha.

26 Dr. Vasanthamurthy (P.W.13), who conducted autopsy on the body of Saritha, has, in his evidence and in the post-mortem report (Ex.P.8), given the following opinion:

"OPINION: THE DECEASED WOULD HAVE APPEARED TO HAVE DIED OF SHOCK DUE TO BURNS INJURIES."

27 Thus, this Court has no incertitude in holding that the prosecution have proved the cause of death of Saritha beyond cavil and hence, no further discussion on this aspect requires to be done.

28 Coming to the recovery of pant (M.O.3) and shirt (M.O.4) worn by Vinayagam, the police came to know about his surrender before the Judicial Magistrate, Ambur, only subsequently and they moved the Court of the District Munsif-cum-Judicial Magistrate, Vaniyambadi, which is the jurisdictional Court, to take Vinayagam into custody. After taking him into custody, the police recovered the pant (M.O.3) and shirt (M.O.4) on his showing. Mr.Krishnamoorthy contended that Mayilainathan (P.W.10), in his cross-examination, has stated that Vinayagam first took the police and the witnesses to his house, which was found locked; the lock was broken and the house was searched and nothing was recovered from there; when Vinayagam was further asked, he took the articles from a bush near his house and produced the same to the police.

29 In the admissible portion of the confession statement of Vinayagam, he has simply stated that he would show the place, where, he has secreted the pant (M.O.4) and shirt (M.O.3) which were worn by him. The evidence of Mayilainathan (P.W.10), about which, Mr. Krishnamoorthy alluded to, reads as under:

“ஆனால், வீடு பூட்டப்பட்டிருந்தது. சாவி எதிரியிடம் இல்லை. பிறகு பூட்டை உடைத்து தேடிப்பார்த்தோம். கிடைக்கவில்லை. பிறகு எங்கே பொருட்கள் என்று எதிரியிடம் கேட்டோம். அந்தப் புதர் வீட்டின் அருகில் இருந்தது. அங்கு தேடிப் பார்த்துத்தான் எதிரி எடுத்துக்கொடுத்தார்.”

30 A reading of the above portion shows that a search was conducted in the house of Vinayagam and nothing was recovered from there. Thereafter, when Vinayagam was asked, he searched for the articles in the shrubs near his house and produced the pant (M.O.3) and the shirt (M.O.4.). The evidence of Mayilainathan (P.W.10) is to the effect that the seizure of pant (M.O.3) and shirt (M.O.4) was effected from a place near Vinayagam's house on his showing. Hence, the same is relevant under Section 27 of the Evidence Act. Assuming for a moment that the recovery was not pursuant to the disclosure of Vinayagam as Mayilainathan (P.W.10) has stated that Vinayagam searched in the bushes near his house, that by itself, cannot vitiate the seizure.

31 The pant (M.O.3) and the shirt (M.O.4) were sent in Form 95-I & II vide Ex.P.17 to the District Munsif-cum-Judicial Magistrate, Vaniyambadi, through whom, it was sent to the Tamil Nadu Forensic Science Laboratory, for examination. The examination report dated 22.04.2009 (Ex.P.15), is admissible under Section 293 Cr.P.C. since the examination has been conducted by the Assistant Chemical Examiner to Government and Assistant Director, Forensic Sciences Department. In the said report, it is clearly stated that kerosene has been detected on the pant (M.O.3) and shirt (M.O.4). Vinayagam has not specifically disputed the prosecution's assertion that pant (M.O.3) and shirt (M.O.4) belong to him. The detection of kerosene in Vinayagam's apparel is a powerful circumstance to implicate him in the offence.

32 In view of the above discussion, this Court holds that the prosecution have proved their case beyond doubt. However, though the Trial Court has given a finding that it was Vinayagam who had poured kerosene on Saritha and set fire to her, Vinayagam has been acquitted by the Trial Court for the offence under Section 302 IPC and convicted for the offence under Section 304(II) IPC on the reasoning that the incident had occurred on account of sudden quarrel, thereby falling under Exception 4 of Section 300 IPC. This Court is unable to

persuade itself to find any justification in the said reasoning. Exception 4 of Section 300 can be invoked only when it is shown that the act was committed without pre-meditation in a sudden fight in the heat of passion upon a sudden quarrel. On a reading of the dying declaration of Saritha, it is seen that she has stated that on the fateful day, it was Vinayagam who quarrelled with her while he was searching for his motor bike key. Vinayagam, being a male, is in a dominant position physically qua the victim, a female. If, by a single act, say, slapping or hacking with a knife found nearby in a fit of passion upon a sudden quarrel, one may invoke Exception 4 of Section 300 IPC. In this case, Vinayagam has taken the kerosene can, poured kerosene on Saritha, thereafter, he has taken the matchbox, ignited the matchstick and has set her ablaze by throwing the matchstick at her. One cannot say that all these three acts, viz., (i) taking the kerosene can and pouring kerosene on Saritha, (ii) taking the matchbox and igniting the matchstick and (iii) throwing the matchstick at Saritha, were done in a trice in the heat of passion. The dying declaration of Saritha also shows that Vinayagam suspected her fidelity and quarrelled with her. She has also stated that Vinayagam would come home drunk and abuse her. This act of Vinayagam would fall within the definition of the word "cruelty" under Explanation (a) to Section 498-A IPC. Hence, the acquittal of Vinayagam by the Trial Court under Section 498-A IPC is also incorrect. Since the State has not filed any appeal against the acquittal of Vinayagam for the charges under Sections 498-A and 302 IPC, this Court has no other option, but, to record its view and put the matter to rest.

In the result, this Criminal Appeal fails and is accordingly dismissed. The Trial Court is directed to secure the custody of Vinayagam and send him to prison to suffer the remaining sentence imposed on him.

Sd/-

सत्यमेव जयते
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Judicial Magistrate No.I,
Tirupattur.
2. Do thorough The Chief Judicial Magistrate,
Vellore.

- 3 The Additional District and Sessions Judge
-cum-Fast Track Judge
Tirupattur
Vellore District.
- 4 Do through The Principal Sessions Judge,
Vellore District.
- 5 The Inspector of Police
Vaniyambadi Town Circle
I/c Vaniyambadi Taluk Police Station
Vellore District
- 6 The Superintendent of Police,
Central Prison, Vellore.
- 7 The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.V.Krishnamoorthy, Advocate Sr.No.85183

Cr1.A.No.31 of 2011

RK(CO)
CSL/03.01.2019



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