

BAIL SLIP

The Appellant in CRL.A.No. 472 of 2012 viz., Viswanathan, S/o.Rathinavel, aged 52 years was directed to be released on Bail as per order of this Court dated 19/11/2012 and made in M.P.No. 1 of 2012 in Crl.A.No.472 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.472 of 2012

Viswanathan

Vs.

... Appellant/Accused

State represented by
Inspector of Police,
Thirumullaivoyal Police Station,
Thiruvallur District.
(Crime No.1391 of 2006)

... Respondent / Complainant

Prayer: The Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence imposed in S.C.No.256 of 2007, dated 31.03.2008, on the file of the learned Additional Sessions Judge (Fast Track Court-III) Poonamallee.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been filed to set aside the conviction and sentence imposed in S.C.No.256 of 2007 dated 31.03.2008 on the file of the learned Additional Sessions Judge (Fast Track Court-III) Poonamallee.

2. The respondent police registered a case in Crime No.1391 of 2006 against the appellant for the offence under Section 302 IPC. After investigation, the police filed a charge sheet before the learned Judicial Magistrate-II, Poonamallee for the offence under Section 304(i) and 302 IPC and the same was taken on file in P.R.C.No.56 of 2006. Since the offences are triable by the Court of Sessions, the learned Magistrate committed the case to the learned Principal Sessions Judge, Tiruvallur. The learned

Principal Session Judge, made over the case to the learned Additional Sessions Judge, Fast Track Court-III, Poonamallee in S.C.No.256 of 2007. Before the Sessions Court, during trial, on the side of the prosecution, the respondent police examined as many as 9 witnesses viz., P.W.1 to P.W.9 and marked as many as 18 documents viz., Ex.P.1 to Ex.P18 and produced four material object viz., M.O.1 to M.O.4.

3. After completion of the evidence on the prosecution side, the accused was questioned under Section 313(1)(A) Cr.P.C. The appellant denied the incriminating circumstances and all evidences as false. There is no oral and documentary evidence on the side of the appellant. After hearing the arguments of both sides, and considering the records, the learned Additional Sessions Judge, has found the accused guilty for the offence under Section 304(i) IPC and convicted and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo further period of one year simple imprisonment.

4. Challenging the said judgment of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court-III, Poonamallee in S.C.No.256 of 2007, dated 31.03.2008, the convict has preferred the present Criminal Appeal before this Court.

5. The learned counsel for the appellant would submit that the witnesses are only the children. The trial Court, without proper appreciation of the child witnesses, has given finding of conviction for the offence under Section 304(i) IPC. The trial Court failed to consider that the case was initially registered only for offence under Section 174 of Cr.P.C. as the victim committed suicide. At that time of filing the complaint, P.W.1 and P.W.2 have not implicated the appellant. P.W.1 and P.W.2 gave a statement before the Investigating Officer, at the first instance that their mother set fire on herself and committed suicide on 12.08.2006 and died in the hospital. They were tuned as false evidence against the appellant. P.W.1 and P.W.2 are stated to be eyewitnesses. The case was originally registered for the offence under Section 174 Cr.P.C. Subsequently, the case was altered under Section 302 IPC. There is no material to show that the appellant only set fire on the victim. Therefore, the prosecution has not proved its case beyond reasonable doubt that the appellant alone set fire on the victim. Due to that the victim sustained burn injuries and died in the hospital. Though P.W.1 and P.W.2 are children of the victim and the appellant, they have not stated before the investigating officer, on the date of commission of offence, their mother set fire on herself. Later, when they were produced before the learned Judicial Magistrate, they have stated the appellant set fire on their mother and they have seen the fact that the victim tried to come out the room. The appellant held her mouth and nose and not allowed her to go out. At that time, the appellant poured

kerosene and set fire on her. Hence, she sustained burn injury and fell down. Suddenly, the appellant escaped from backside of the house. These facts have not stated by the P.W.1 and P.W.2, on the date of occurrence or even soon after the occurrence. Therefore, the learned Sessions Judge failed to consider these materials. Initially, the case was registered under 174 Cr.P.C. The victim has not given any dying declaration. The Doctor has stated that she was not in a position to give dying declaration. In the absence of dying declaration given by the wife, and the children are stated to have been not present in the house at the time of the occurrence. A false case has been registered under Section 302 IPC against the appellant. When there are two views possible, the view which is favourable to the accused has to be taken into consideration. The trial Court has failed to consider these aspects as well as the legal position and wrongly convicted the appellant for offence under Section 304(i) IPC, which warrants interference of this Court.

6. The learned counsel for the respondent (Crl. side) would submit that though the case was initially registered under Section 174 Cr.P.C., subsequently, during investigation, P.W.1 and P.W.2 the children of the victim, have clearly stated that due to threat made by the appellant, they could not reveal the same. P.W.1 went to inform his grandmother, who was gone to the Church and after she came back to the house, took the victim to the hospital. At that time of the admission, she has clearly stated before the duty doctor that the husband of the victim set fire on the victim and further the Doctor made an entry in the Accident Register. P.W.1 and P.W.2 have categorically stated before the Court that on the date of occurrence, the father has threatened them not to tell about the incident to anybody. The children have seen the father himself setting fire on the mother. That is why naturally they were afraid to mention the same before the Police. Subsequently, they were handed over to the person who is a close relative and they have felt that they are in safer side. At that time, they revealed the truth to the persons to whom they would trust. Subsequently, the police arranged to record the statement before the Magistrate. Therefore, the learned Magistrate recorded the statement from P.W.1 and P.W.2 under Section 164 Cr.P.C. Therefore, P.W.1 and P.W.2 and also the mother of the victim have clearly stated about the involvement of the appellant. Doctor, who examined the victim, has also stated that due to burn injuries, she died. From the evidence of the witnesses P.W.1, P.W.2 and the mother of the victim and also Doctor's evidence, the prosecution has proved its case beyond reasonable doubt. There is no reason to interfere with the judgment of the learned Additional Sessions Judge, Tiruvallur.

7. Heard the learned counsel for the appellant as well as the learned Government Advocate (Crl. side) and perused the materials available on record.

8. The case of the prosecution is that on 12.08.2006, at about 6.30 a.m. the appellant came to the house of the mother in law, where his wife and children were staying. At that time, the appellant quarrelled with his wife and held her mouth and nose. With an intention to kill his wife, he poured kerosene and set fire on her. Due to that she sustained burn injuries and subsequently died. Therefore, the appellant has committed the offence under Section 302 IPC. Though after investigation the prosecution laid a charge sheet and initially, the case was registered under Section 174 Cr.P.C. for suspicious death, subsequently, it was altered as 302 IPC, after examining the witnesses. When the victim was taken to the hospital and admitted in the hospital, at that time, the Police went to the hospital for recording the statement from the mother of the victim. During trial, the mother of the victim died. Therefore, she was not examined before the Court. She brought the victim and admitted her in the hospital. The Doctor, who was on duty, made an entry in the Accident Register about the history narrated by the mother of the victim. During trial, the children of the victim were examined as P.W.1 and P.W.2. They have categorically stated that there was a wordy quarrel between the father and mother. Therefore they were staying in maternal grandmother's house at Thirumullaivoyal. On 12.08.2006, at about 6.30 a.m. the father of the children, has come. At that time, the maternal grandmother was not in the house and gone to the Church. The victim has prepared tea for all the children and the appellant. After tasting tea, the appellant poured it on the face of the victim and she was crying. The appellant asked the children to watch television. They had also gone to watch the T.V. in hall and they reduced the volume and observed what was happening between the father and mother. After sometime, there was no sound and the children went to see and at that time the father poured kerosene on the mother and set fire. When the mother tried to escape from the place, he hold her mouth and nose. Subsequently, she tried to come out the room, but she fell down. Suddenly, the father escaped from backside of the house. After making noise, the neighbours came inside. P.W.1 went to inform about the incident to his grandmother. She came and took the victim to the hospital. At that time, the father threatened the children not to tell the incident to anybody. P.W.2 has also narrated the same. During trial, the mother of the victim died and therefore, she could not corroborate the evidence of P.W.1 and P.W.2 as to whether they have stated the maternal grandmother about the incident and also given before the Doctor. However, the Doctor, one who was treated the victim, was examined as P.W.4. He has stated that on 12.08.2006 at about 9.00 A.M. the woman aged about 35 years, was brought by her mother Maria Natchathiram. At that time, the victim was not in consciousness. The mother of the victim has clearly stated that on the same day, at about 6.30 a.m. the husband of the victim poured kerosene and set fire on her. P.Ws.5,6 and 7 Doctors' who treated the victim, have clearly narrated about the injuries sustained by her. She was not in a position to give dying

declaration.

9. From the evidence of P.W.1 to P.W.3, it is clear that the appellant only had set fire on the victim. Though the learned counsel for the appellant has stated that on the date of occurrence, they have not implicated the appellant in this case, subsequently, from the evidence of P.W.1 and P.W.2, it is clear that they have seen their father pouring kerosene and setting fire on her. Since his father threatened them, they have not revealed the same. However, they revealed the incident to their grandmother.

10. On a reading of the Ex.P5, Copy of the Accident Register, it is clear that at that time of the admission, before the duty Doctor, the mother of the victim has stated how her daughter sustained burn injuries. During trial, the mother is not alive. The Accident Register was recorded on the same day at about 9.00 A.M. itself. The occurrence took place at 6.30 a.m. The evidence of P.W.1, P.W.2 and P.W.4 Doctor, have clearly shows that the appellant only set fire on his wife. Even P.W.5 has clearly strengthened the evidence of P.W.1 and P.W.2. P.W.3 the learned Magistrate has also stated that after completing the proceedings, statement was recorded under 164 Cr.P.C. from the evidence of P.W.1 and P.W.2, and the children have narrated the incident.

11. From the evidence of P.W.4 to P.W.7, the prosecution has proved its case beyond reasonable doubt. Though the learned counsel for the appellant submitted that at the first instance, they have not implicated the appellant in this case, but they have clearly stated before the Judicial Magistrate that due to threatening of their father, they could not reveal the truth. Subsequently, the father was arrested based on the statement given by mother in law before the Police, in the hospital.

12. This Court is of the view that the evidence of P.W.1 and P.W.2 is trust worthy. If really, the appellant is innocent and the victim had committed suicide, the children would have naturally gone back to their father after the incident. Because they have seen their father setting fire on their mother and the subsequent threat made to them, they have chosen to stay away from him.

13. From the evidences of P.W.1 to P.W.7, the prosecution has proved its case beyond reasonable doubt. However, from the evidences, it is seen that the victim and the appellant after fought with each other. The trial Court found that due to sudden provocation, he poured kerosene and set fire on the victim.

14. Admittedly in this case, the occurrence had not happened in the matrimonial home but in the parental home. Therefore, the victim took all the children and went to the house of her mother and was staying there. From the evidence of

P.W.1 and P.W.2, the father came there and asked them to come. The victim refused to go to the appellants house. The appellant has not properly maintained the family, he used to drink alcohol and fight with the victim. Since they were staying in the parental home, the appellant might have come and called the wife and children. Since the wife refused, due to sudden provocation, he poured kerosene and set fire on the wife. There was no pre-meditation or pre-planning. It does not fall under Section 302 IPC. It would fall under Section 304(i) IPC. The trial Court has rightly appreciated the prosecution evidences and came to the conclusion that the appellant has not committed offence under Section 302 IPC and he has committed offence under 304(i) IPC and the same does not warrant any interference of this Court. This Court does not find any perversity in the judgment passed by the trial Court and there is no merit in the appeal.

15. In the result, this appeal is dismissed. The trial Court is directed to secure the custody of the accused to undergo remaining period of sentence, if any.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Sessions Judge
(Fast Track Court-III)
Poonamallee.

2.The Inspector of Police,
Thirumullaivoyal Police Station,
Thiruvallur District

3. The Public Prosecutor,
High Court of Madras.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.

5.The Judicial Magistrate No.2,
Poonamallee.

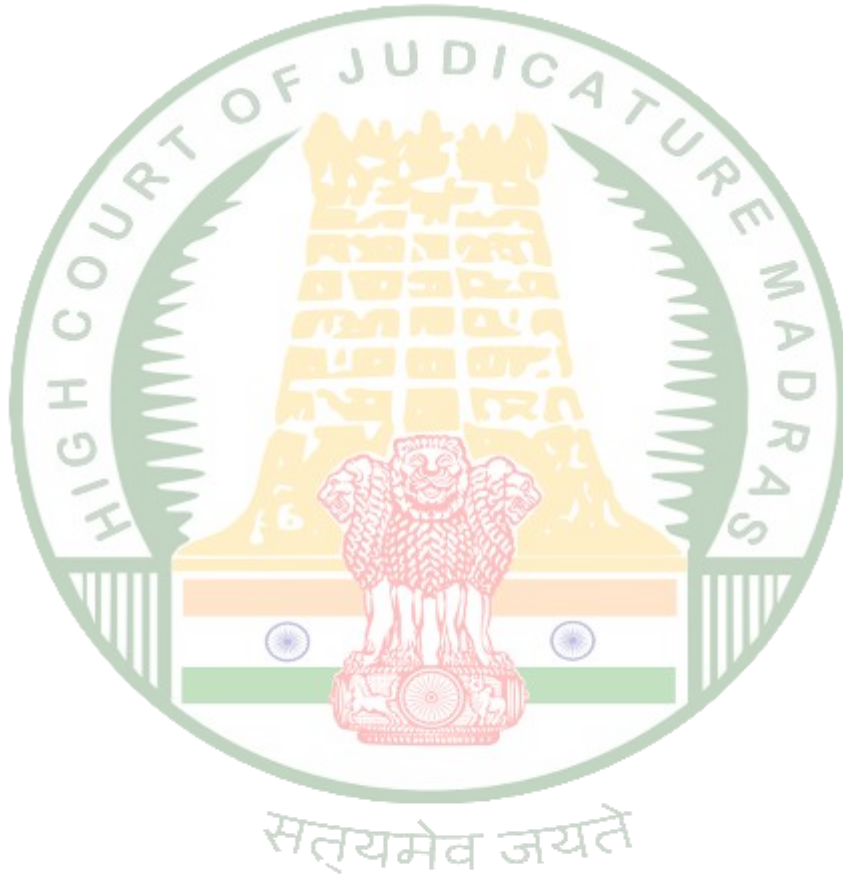
6.The Chief Judicial Magistrate,
Tiruvallur.

Copy To

The Section Officer,
Criminal Section,
High Court of Madras,
Chennai-104.

Crl.A.No.472 of 2012

PM(CO)
GN(03/02/2020)



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