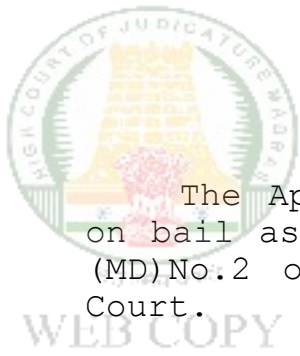




**Bail Slip**

The Appellant namely Elangovan alias Chinnapillai was released on bail as per Order of this Court dated 22.12.2018 and made in MP (MD)No.2 of 2008 in Crl.A(MD)No.564 of 2008 on the file of this Court.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 27.07.2019  
CORAM  
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**Crl.A. (MD)No.564 of 2008  
and  
Crl.M.P. (MD)No.3658 of 2019**

Elangovan alias Chinnapillai

... Appellant/Accused

Vs.

State rep.by  
The Inspector of Police,  
Lalgudi Police Station,  
Trichy District.  
Crime No.522 of 2007

... Respondent/Complainant

**Prayer** : Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment passed in S.C.No.241 of 2007 dated 23.04.2008 passed by the Principal Sessions Judge of Tiruchirappalli, Trichy.

For Appellant : Mr.S.Prabhu, Legal Aid Counsel.

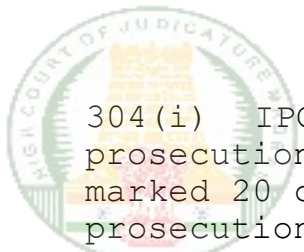
For Respondent : Mr.R.Anandharaj  
Additional Public Prosecutor

**JUDGMENT**

This Criminal Appeal has been filed to set aside the judgment made in S.C.No.241 of 2007, dated 23.04.2008 passed by the learned p Principal Sessions Judge of Tiruchirappalli, Trichy.

2.The respondent has registered a case against the appellant for the offence punishable under Section 302 IPC. After investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate, Lalgudi in P.R.C.No.14 of 2007 and the case was committed to the Sessions Court Judge, Trichy.

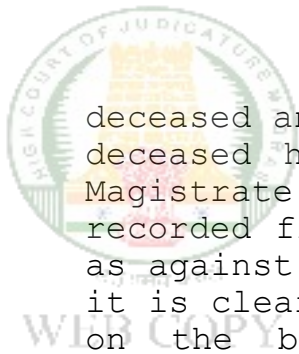
3.The learned Sessions Judge after completing formalities, framed charges against the appellant for the offence under Section



304(i) IPC. Thereafter, in order to prove the case of the prosecution, the prosecution examined as many as 12 witnesses and marked 20 documents besides 2 material objects. After completion of prosecution witnesses, on the side of the appellant, no oral and documentary evidence was adduced. After completion of trial and also hearing the arguments on either side and also on perusal of the records, the learned Sessions Judge found that the accused was not found guilty for the offence punishable under Section 302 IPC whereas found guilty for the offence punishable under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for a period of seven years and imposed a fine amount of Rs.1,000/- i/d to undergo rigorous imprisonment for further period of six months. Challenging the said judgment, the accused filed the present Criminal Appeal.

4.The learned counsel appearing for the appellant would submit that the prosecution has projected as if P.Ws.1 and 2 are eye witnesses, whereas, during the cross-examination, there are material contradictions for the same. P.Ws.1 and 2 were not present at the scene of occurrence and he stated that the appellant, at the time of entering into the house of the deceased, P.W.1 and his brother, who is P.W.2, were not present and they are not the interested witnesses. P.Ws.1 and 2 are the sons of the deceased and P.Ws.3 and 4 are not the eye witnesses and they are neighbors of the deceased and only after hearing the noise of the deceased, they came to the place of occurrence and when they were entering into the house, the appellant ran away from the scene of occurrence. In this case, the appellant has also sustained injuries. When the appellant went to the house of the deceased, the deceased asked Rs.500/- from him and when he refused to give the same, a wordy quarrel arose between them. Due to which, the deceased herself poured kerosine on her and set fire and hence, the appellant is no way connected with the occurrence and when the deceased set fire, the appellant tried to put off the fire, however, he could not succeed and thereby he sustained injuries. The prosecution has failed to investigate the matter on this aspect and the trial Court also failed to consider the evidence of P.Ws.1 and 2 and also the statement given by the appellant during the proceedings under Section 313 Cr.P.C. Therefore, evidence of prosecution creates doubt.

5.The learned Additional Public Prosecutor appearing for the respondent would submit that P.Ws.1 and 2 are the sons of the deceased and they have stated that the deceased developed illegal intimacy with the appellant and the appellant used to visit to the house of the deceased. Whenever, the appellant came to the deceased house, P.W.1 and 2 went out from the house. On the date of occurrence, when the appellant came to the house of the deceased, they went out and the appellant and the deceased were talking together. P.Ws.3 and 4 / neighbors were clearly stated that when they heard the noise of the deceased, they came out from their house and at that time they have seen that the appellant ran away from the house of the deceased and they entered into the house of the



deceased and secured the deceased and admitted in the hospital. The deceased has given dying declaration before the learned Judicial Magistrate in the presence of the Doctor. Based on the statement recorded from the deceased, the respondent police registered a case as against the appellant. A plain reading of the postmortem report, it is clear that the deceased died only due to the burn injuries and on the body, there was smell of kerosene. Therefore, the prosecution proved the case beyond reasonable doubt. The deceased died only due to the burn injuries and the death of the deceased is also unnatural.

6.It is clear from the evidence of P.Ws.1 and 2 that the appellant and the deceased had illegal intimacy and on the date of occurrence, the appellant went to the house of the deceased and there was a wordy quarrel arose between them and due to the same, on sudden provocation, the appellant poured kerosene on the deceased and set fire on her. The Trial Court has not found the appellant guilty under Section 302 IPC since there is no pre-planned and due to sudden provocation, the appellant poured kerosene and set fire. Therefore, the trial Court found guilty under Section 304(1) IPC.

7.It is the case of the prosecution that the deceased was having illicit intimacy with the appellant and he used to go to the house of the deceased. Whenever he came, the children of the deceased went out the house. On the date of occurrence, when the appellant came to the house of the deceased, the children of the deceased went out from the house. At that time, some wordy quarrel arose between the appellant and the deceased and on sudden provocation, the appellant poured kerosene on deceased and set fire on her. On hearing noise from the house of the deceased, neighbour had rushed to the house of the deceased. When they arrived, the appellant ran away from the house of the deceased. After that, the neighbour rescued the deceased and admitted her in Government Hospital. On the basis of dying declaration, which was recorded form the deceased by the learned Judicial Magistrate, a case has been registered as against the appellant.

8.In order to prove the prosecution, on the side of the prosecution, as many as 12 witnesses examined out of which, P.Ws.1 and 2 are eye witnesses and P.Ws.3 and 4 are circumstantial witnesses and P.W.8 is learned Judicial Magistrate one who has recorded the dying declaration and also P.W.10 Doctor one who has conducted the postmortem and P.W.7 is a Doctor one who has given certificate to the learned Judicial Magistrate with regard to the sound mind of the deceased at the time of giving dying declaration.

9.A reading of P.W.1 and P.W.2, there was a contradictions during the cross-examination in respect of their presence at the time of occurrence. A reading of dying declaration given by the deceased before P.W.7, it is clear that the appellant and the

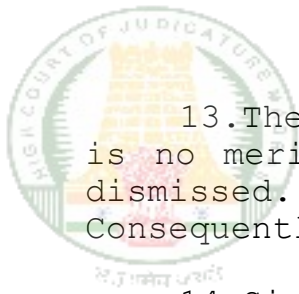


evidence of P.Ws.1 and 2 and the dying declaration of the deceased were corroborated and proved that the appellant was present in the house of the defacto complainant when the occurrence had taken place.

10.P.Ws.1 and 2 also stated that the appellant came to the house of the deceased and further in the evidence of P.W.s.3 and 4 they have stated that they have heard the noise from the house of the deceased and when they rushed to the deceased's house, the appellant ran away from the scene of occurrence. Subsequently, the deceased was taken to the hospital. Dying declaration recorded by the Judicial Magistrate and also one Doctor who issued certificate would clearly show that at the time of giving dying declaration, the deceased in sound state of mind had given her statements. Therefore, the death of the deceased is un-natural. Hence, the prosecution proved the case beyond reasonable doubt.

11.The learned counsel appearing for the appellant has also not denied the presence of the appellant and also the injuries sustained by him. Therefore, the prosecution has proved the case beyond reasonable doubt. The only question is whether the deceased herself poured kerosene and set fire herself or as stated by the prosecution, the appellant poured kerosene and set fire on the deceased, for which, it is revealed from the evidence of P.Ws.1 to 4 that the appellant was present at the time of occurrence that P.Ws.3 and 4, after hearing the noise from the house of the deceased, they rushed to the house of the deceased, at that time, the appellant ran away from the house of the deceased. If the appellant has not poured kerosene and set fire on deceased. He ought to have taken the deceased and to take her to the hospital. However, the appellant did not do to so. He immediately escaped from that place. A reading of dying declaration given by the deceased, which was recorded by the Magistrate and the same was certified by the Doctor, clearly shows that the appellant, one who has poured kerosene and set fire on the deceased from that the presence of the appellant is not in dispute and at the time of occurrence appellant and deceased were present in the house of the deceased. When only two persons were inside the house, the truth is only known to them. The deceased is not before this Court.

12.This Court is not inclined to believe the defence taken by the appellant. The Trial Court also rejected such contention. This Court does not find any reason to allow this Criminal Appeal. Further, this Court also find that the prosecution witness proved the case beyond reasonable doubt, as rightly held by the Trial Court that the appellant was found not guilty under Section 302 IPC, but found guilty under Section 304(i) IPC and the said occurrence had taken place on sudden provocation. This Court is also find that the appellant has not committed the offence under Section 302 IPC and the offence falls under Section 304(i) IPC.



13. There is no reason to allow this Criminal Appeal and there is no merit in this Criminal Appeal and the same is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed.

14. Since the appellant appeared through Legal Aid Counsel, the learned counsel for the appellant is entitled for fee as per rules.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS )

To

1. The Principal Sessions Judge, Trichy.
  2. The Additional Sessions Judge, Trichy.
  3. The District Legal Services Authority, Madurai.
  4. The Inspector of Police,  
Lalgudi Police Station,  
Trichy District.
  5. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
- +1 CC to Mr.S.PRABHU, Advocate SR-78169.

**Crl.A. (MD) No.564 of 2008**  
**27.07.2019**

CS(11.10.2019) 5P 7C