

**BAIL SLIP**

Rajasekaran, S/o.Antony, male, aged about 44 years is released on bail vide Court order dated 17.12.2013 made in MP(MD) No.1 of 2013 in CrI A(MD)No.363 of 2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrI. A. (MD)No.363 of 2013

Rajasekaran

... Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
K.Pudur Police Station,
Madurai.

(Crime No.426 of 2006)

... Respondent/Complainant

Prayer : This Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed in S.C.No.246 of 2008 on the file of the Sessions Judge/Mahila Court/Mahalir Neethimandram, Madurai, dated 25.10.2013.

For Appellant : Mr.S.Thirupathy

For Respondent : Mrs.S.Bharathi,
Government Advocate(CrI.Side).

JUDGMENT

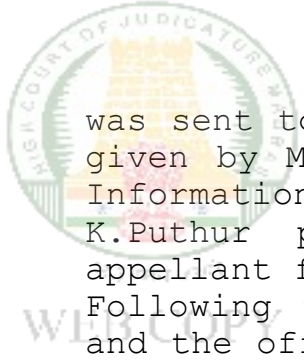
The appellant was convicted for the offence under Section 304 (Part-II) of I.P.C., and sentenced to undergo 10 years Rigorous Imprisonment and levied with a fine of Rs.2,000/- vide Judgment dated 25.10.2013 in S.C.No.246 of 2008 on the file of the Sessions Judge/Mahila Court/Mahalir Neethimandram, Madurai.

2. Heard the learned counsel on either side.

3. The case of the prosecution is that the appellant was having illicit intimacy with the deceased Muthumani. The husband of Muthumani was employed abroad. Muthumani was having two children. Likewise, the appellant/accused is also having wife and two children. While so on 25.04.2006 at about 11.00 a.m. the appellant is said to have forced the deceased Muthumani to accompany him in an auto and took her to Kadachanendal. Since Muthumani wanted to get away from the appellant out of rage, the appellant is said to have poured Petrol on her and set fire to her. Muthumani suffered extensive injuries and succumbed to death on 29.04.2006 at about 03.30 a.m.

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

4. After Muthumani was admitted in the hospital, intimation



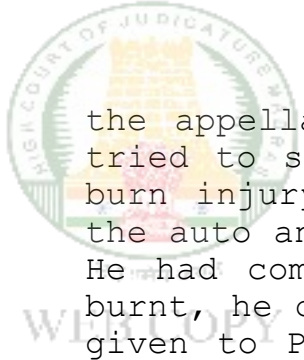
was sent to the police vide Ex.P.5. Ex.P.6 is the dying declaration given by Muthumani on 25.04.2006. Based on the same, Ex.P.8 First Information Report in crime No.426 of 2006 on the file of the K.Puthur police station, Madurai, was registered against the appellant for the offences under Sections 364, 387 and 307 of I.P.C. Following the death of Muthumani, alteration report was submitted and the offence under Section 302 of I.P.C. was included. The case was taken up for investigation and final report came to be laid against the appellant for the offences under Sections 364 and 302 of I.P.C. before the Judicial Magistrate No.VI, Madurai. Cognizance of the offence was taken. The case was committed to the Sessions Court in P.R.C.No.4 of 2007. It was taken up for trial in S.C.No.246 of 2008.

5. The appellant was originally found guilty of the offence of murder and sentenced to life imprisonment. On appeal, the Judgment of the learned trial Judge was set aside and the matter was remanded for fresh consideration. Following remand, the learned trial Judge by the impugned Judgment while acquitting the appellant of the offences under Sections 302 and 364 of I.P.C., chose to find him guilty of the offence under Section 304(Part-II) of I.P.C., and sentenced him to undergo 10 years Rigorous Imprisonment. Challenging the same, this appeal came to be filed.

6. What stares at the face is the dying declaration given by Muthumani. It is not in dispute that the occurrence took place on 25.04.2006 at about 11.00 a.m. near Kadachanendal. After Muthumani was admitted to the hospital, the hospital authorities sent intimation to the police. Thereupon, the Judicial Magistrate No.VI, Madurai, recorded the dying declaration of Muthumani vide Ex.P.6. Before her dying declaration was taken, it was ascertained that Muthumani was conscious and in a fit state of mind to give a statement. The concerned doctor has also given his certificate that the patient Muthumani was conscious and in a fit state of mind throughout. Muthumani had clearly and categorically stated that it was the appellant who set fire to her. She admitted that there was illicit intimacy between her and the appellant who was her neighbour. She had further stated that the appellant was in good terms with her originally. The actual reason for her to keep away from the appellant was that her husband was returning from Dubai. This enraged the appellant who compelled the deceased to accompany him. According to the deceased, the appellant picked up quarrel with her and committed the offence in question.

7. Paced with this formidable evidence, the learned counsel appearing for the appellant submitted that he would not challenge the finding of guilt and that he would only seek modification in the matter of sentence.

8. Even while, not challenging the finding of guilt, the appellant's counsel pointed out that he had also suffered 30% burn injuries. The issue raised by the appellant's counsel is that if



the appellant wanted to do away with Muthumani, he would not have tried to save her and in any event he would not have suffered any burn injury. The fact remains that it was the appellant who drove the auto and took the injured Muthumani in the auto to the hospital. He had come up to J.K.Hospital. Since his hands had already been burnt, he could not have driven any further. Therefore, message was given to P.W.6 Paulpandi to take them to Government Hospital. The fact that the appellant had also suffered injuries and that it was he who took the deceased with him in the auto to the hospital are mitigating circumstances. Admittedly the appellant has a family with a son and a daughter. Taking note of the mitigating factors, even while sustaining the conviction imposed on the appellant, the sentence of imprisonment imposed on him is reduced and modified from ten years Rigorous Imprisonment to four years Rigorous Imprisonment. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by him shall stand cancelled.

9. With this modification in the matter of sentence, the Criminal appeal stands partly allowed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To

1. The Sessions Judge/Mahila Court/
Mahalir Neethimandram, Madurai.
2. The Inspector of Police,
K.Pudur Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.S.THIRUPATHY, Advocate (SR-84109[F] dated 29/08/2019)
Cr1. A. (MD) No.363 of 2013
28.08.2019

KK/04.03.2020/3P-7C