



BAIL SLIP

The Appellant/Sole Accused Subbulakshmi W/o. Kumarakurubaran was released on bail granted as per order dated 16.08.2019 made in Crl MP(MD) No.968 of 2018 in Crl.A(MD)No.66 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A. (MD)No.66 of 2018

Subbulakshmi ... Appellant /Sole Accused

Vs.

State rep. by
The Inspector of Police,
Chinna Kovilan Kulam Police Station,
Tirunelveli District.
[Cr.No.104/2015]

... Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.730 of 2016 on the file of the 4th Additional Sessions Court, Tirunelveli, dated 16.11.2017 and set aside the conviction and sentence imposed against the appellant.

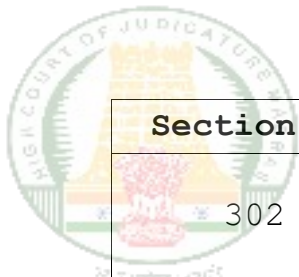
For Appellant : Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant is the sole accused in S.C.No.730 of 2016, on the file of the learned 4th Additional Sessions Judge, Tirunelveli and she was tried for the commission of offences under Sections 302, 201 and 203 IPC. The trial Court, vide the impugned judgment dated 16.11.2017, found her guilty for the commission of offences under Sections 302 and 201 IPC; convicted and sentenced her as follows:



Section of Law	Punishment
302 IPC	To undergo imprisonment for life and to pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for one year.
201 IPC	To undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, i/d to undergo rigorous imprisonment for one year.

The sentences were ordered to run concurrently and set off was also granted to the accused under Section 428 Cr.P.C. Challenging the legality of the said conviction and sentence, the appellant has preferred the instant appeal.

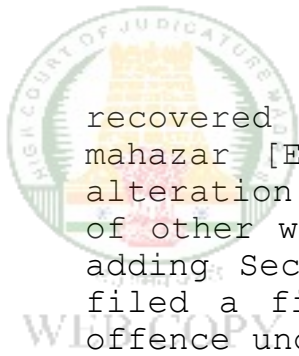
2. The facts of the case, relevant for the purpose of disposal of this appeal, in a nutshell, are as follows:

2.1. The deceased Kumarakurubaran and the appellant / accused are husband and wife. On 31.08.2015 at about 10.30 pm, there was a quarrel between the deceased and the appellant / accused in respect of conducting of third marriage to the deceased, for which, the appellant demanded some property in her favour and it was refused. During the course of the quarrel, the appellant attacked the deceased with Aruvalmanai [MO5] on his neck and other parts of the body and the deceased succumbed to injuries on the spot. The appellant, in order to escape from the offence, on 01.09.2015 around 01.00 pm, poured kerosene on the body of the deceased and set fire and acted as if the deceased committed suicide and she also sustained injury, while she tried to rescue him. Subsequently, she was also admitted in Government Hospital at Sankarankovil.

2.2. Upon information at about 4.30 pm on 01.09.2015 from the Government Hospital at Sankaranvoil, Police Constable Grade -I, attached to Chinnakovilankulam Police Station, went to the Hospital at 05.00 pm and recorded the statement [Ex.P9] / complaint of the accused, who was treated as an inpatient. Based on the complaint, a case in Crime No.104 of 2015 was registered under Section 174 Cr.P.C and printed First Information Report is marked as ExP10.

2.3. The Sub-Inspector of Police [PW24], on receipt of the First Information Report, went to the place of occurrence and prepared an observation mahazar [Ex.P11] and rough sketch [Ex.P12] and recovered the body of the deceased and sent the same to the mortuary at Government Hospital, Sankarankovil. Around 9.00 to 10.30 pm, PW24 conducted inquest in the mortuary and prepared an inquest report [Ex.P14] and subsequently, altered the Section to 302 IPC and the alteration report is marked as Ex.P16.

2.4. The Inspector of Police [PW28] conducted the further investigation and arrested the appellant / accused, near Periyakovilankulam Bus stop on 05.11.2015 at about 02.00 pm and she voluntarily gave a confession statement. The admissible portion of the statement is marked as Ex.P18 and based on the same, PW28



recovered the Aruvalmanai [MO5] from a thornebush under a cover of mahazar [Ex.P19]. Subsequently, he added Section 201 IPC and the alteration report is marked as Ex.P20 and he recorded the statements of other witnesses and again filed an alteration report [Ex.P21] by adding Section 203 IPC and after completing the investigation, he filed a final report on 09.02.2016 against the appellant for the offence under Sections 302, 201 and 203 IPC.

2.5. The final report was taken on file in PRC NO.8 of 2016 by the learned Judicial Magistrate, Sankarankovil and the same was committed to the Court of Sessions, Tirunelveli and was taken on file in SC.No.730 of 2016 by the learned IV Additional District and Sessions Judge, Tirunelveli.

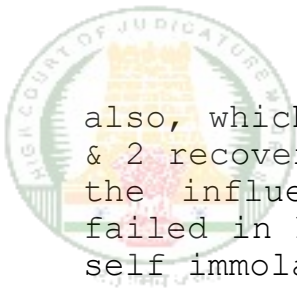
2.6. On the side of the prosecution, 28 witnesses were examined; 22 documents were marked and 5 material objects were produced. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C and the accused denied the same. Though the accused has stated that there are witnesses to be examined on her side, neither oral nor documentary evidence was let-in on behalf of the accused.

2.7. In conclusion of the trial, the learned trial Judge, found the appellant / accused guilty and has convicted her as stated supra. Challenging the legality of the same, the appellant has preferred the instant appeal.

3. Heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.K.Prabhu, learned Counsel on record for the appellant / accused and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent / State.

4. Mr.V.Kathirvelu, learned Senior Counsel appearing for the appellant / accused submitted that the deceased and the appellant are husband and wife. Even before their marriage, the deceased got divorced from his first wife. He was an Auto Driver by profession. The appellant used to go to the 100 days employment under the Mahatma Gandhi National Rural Employment Guarantee Scheme. Both the appellant and the deceased lived together for almost 18 years and due to the wedlock, the appellant gave birth to a child in the year 1998. Unfortunately, the said child was mentally ill and subsequently, died. Again, in the year 2001, the appellant gave birth to another child, but, dismally, the child also died. Taking advantage of no issues between them, the deceased harassed her and also wanted consent from the appellant to go for a third marriage, but, she refused to give such consent.

5. According to the learned Senior Counsel, the deceased is an alcoholic man and PWs 6 to 9 have invariably deposed that he used to come home after taking drinks and the appellant / accused used to tolerate the same. On the fateful day, the deceased came home after



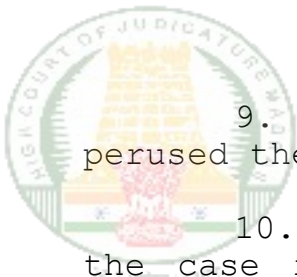
also, which was clearly established in view of the presence of MOs 1 & 2 recovered from the place of occurrence by the prosecution. Under the influence of alcohol, he harassed the appellant and having failed in his attempt to get the consent, he has made an attempt to self immolate himself.

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6. In fact, the postmortem certificate [Ex.P17] also clearly proves that the deceased's stomach was containing alcohol. The Doctor [PW25], who conducted the postmortem, has also deposed about the presence of alcohol in the deceased body. This shows that the deceased was under the influence of alcohol and when the appellant / accused refused to give consent, he attempted to commit self immolation. When the deceased set fire to himself, the appellant / accused tried to rescue the deceased, during which, she also sustained 20% burn injuries. For the burn injuries sustained by her, the appellant took two months treatment as an inpatient in the Government Hospital, Sankarankovil.

7. Continuing his arguments, the learned Senior Counsel has submitted that in fact, the brother of the deceased [PW2] has deposed that the deceased was suffering from mental illness and he was taking treatment for the same for quite long time even prior to the incident. In view of his mental illness, he attempted to commit self immolation and only to save him, when the appellant / accused intervened, she also sustained 20% burn injuries. In spite of the burn injuries sustained by the appellant / accused, that has been demonstrated as an effort to save the deceased from the attempt made by him for self immolation, the prosecution has wrongly registered the case against her alleging that she has made a confession and that based on the same, they recovered the Aruvalmanai [MO5]. This is a clear case of not only no eye witness but also no circumstantial evidence. Therefore, he prays for allowing this appeal.

8. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent / State, refuting the arguments advanced by the learned Senior Counsel for the appellant / accused, would submit that the father of the deceased [PW1] and the brother of the deceased [PW2] have clearly spoken about the involvement of the accused in the commission of murder of the deceased. This has been corroborated by the evidence of the mother of the deceased [PW3]. The learned trial Judge, taking note of the fact that the appellant / accused, having suffered 20% burn injuries during the incident, miserably failed to give satisfactory explanation to the neck injuries sustained by the deceased, has held against the appellant. Therefore, the arguments advanced by the learned Senior Counsel appearing for the appellant that for 18 long years, they lived together and that the appellant gave birth to two children and both of them died, cannot be a ground to acquit her.



9. This Court has considered the rival submissions and also perused the documents placed on record.

10. Admittedly, there is no eye witness to the occurrence and the case rests upon circumstantial evidence. In a case based on circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond reasonable doubt and the proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. Keeping these broad principles in mind, we have scrutinized the evidence carefully.

11. The case of the prosecution is that the deceased wanted to marry for the third time and therefore, required consent from the appellant, for which, she demanded some property in her favour and it was refused. Infuriated by the same, she attacked the deceased with Aruvalmanai [MO5] and set fire to the body to show it was a death on account of accidental fire. But, according to the defense, for 18 long years, the deceased and the appellant lived together and taking advantage of no issues between them, the deceased wanted consent from the appellant and when it was refused, he committed the self immolation and when the appellant tried to rescue him, she also sustained 20% burn injuries.

12. The finding given by the trial Court is that when the appellant / accused was able to explain the 20% burn injuries, for which she took treatment as an inpatient in the Government Hospital, Sankarankovil, she has failed to give any satisfactory explanation as to how the deceased sustained the neck injury, when she was the only person staying with the deceased at the time of occurrence in the house.

13. This finding of the trial Court, in the opinion of this Court, is reasonable. However, we are of the view that the following mitigating circumstances requires serious consideration at the hands of this Court:

i) that the deceased was all along coming to home after having drinks, as has been invariably deposed by PWs 6 to 9 and that on the date of occurrence, the deceased was under the influence of alcohol as there was presence of alcohol in the body of the deceased, as per the evidence of the Doctor [PW25] and that two liquor bottles [MOs 1 & 2] were also recovered from the place of occurrence;

ii) that the deceased got divorced from the first wife and even in the second marriage with the appellant, the two children born through them died and therefore, put pressure on the appellant to give consent for third marriage, as has been consistently deposed by PWs 1 to 5;

iii) that there were burn injuries to both the deceased and the appellant, for which, the appellant took treatment as inpatient;



iv) even the brother of the deceased [PW4] in his evidence has deposed that the deceased was taking treatment for mental illness for sometime.

14. In view of the aforesaid mitigating circumstances, while we partially agreeing with the reasoning and conclusion arrived upon by the learned trial Judge, keeping in mind that she already underwent two years imprisonment, having sustained 20% burn injuries, we are of the view that the case of the prosecution can be brought under Section 304(i) IPC only.

15. Therefore, the appellant / accused is convicted under Section 304(i) IPC and not under Section 302 IPC. Accordingly, we modify the sentence to four years rigorous imprisonment, for the offence under Section 304(i) IPC. In view of the foregoing reasonings, while confirming the conviction under Section 201 IPC, the sentence imposed thereon is modified to four years rigorous imprisonment.

16. In the result,

- this Criminal Appeal is partly allowed;
- the judgment of conviction and sentence passed by the learned 4th Additional Sessions Judge, Tirunelveli, in S.C.No.730 of 2016, dated 16.11.2017, stands modified as follows:

Ordered by the trial Court	Ordered by this Court
302 IPC - To undergo imprisonment for life and to pay a fine of Rs.1,000/-, with default sentence of one year rigorous imprisonment.	304(i) IPC - To undergo rigorous imprisonment for four years and to pay a fine of Rs.1000/-, with default sentence of one year rigorous imprisonment.
201 IPC - To undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- with default sentence of one year rigorous imprisonment.	201 IPC - To undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- with default sentence of one year rigorous imprisonment.

- the sentence of imprisonment shall run concurrently and the period of imprisonment already undergone shall be set off under Section 428 Cr.P.C.

- Since the appellant is in bail, the learned trial Judge is directed to secure the appellant and confine her in prison. Bail bonds, if any, executed by the appellant stands cancelled.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)



1)The IV Additional Sessions Judge,
Tirunelveli.

2. The Judicial Magistrate, Sankarankovil.

3)The Inspector of Police,
Chinna Kovilan Kulam Police Station,
Tirunelveli District.

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

5)The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

6)The Superintendent of Central Prison (Women)
Madurai.

+1 CC to Mr.K.PRABHU, Advocate (SR-105254[F] dated 17/12/2019)

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16.12.2019

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