



BAIL SLIP

This Appellant namely Sudalaimani @ Mani, was released on bail as per order of this Court dated 28/04/2020, in Crl.MP(MD)No.2055/2018 in Crl.A(MD)No.127 of 2018.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.01.2020
CORAM:**

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl. A. (MD)No.127 of 2018

Sudalaimani @ Mani ... Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Muthaiyapuram Police Station,
Thoothukudi District.
(In Crime No.385 of 2014)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to call for the entire records connected to the Judgment in S.C.No.402 of 2015 on the file of the II Additional District and Sessions Court, Thoothukudi dated 19.01.2017, and set aside the conviction and sentence imposed against the appellant.

For Appellant	: Mr.R.Alagumani
For Respondent	: Mr.R.Anandraj
	Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.402 of 2015 on the file of the II Additional District and Sessions Judge, Thoothukudi and he stood charged, tried and convicted for the commission of offence under Section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- with default sentence of 1 year Simple Imprisonment vide judgment dated 19.01.2017. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.



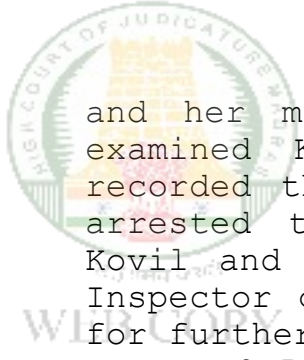
2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that on 06.12.2014 at about 7.30 a.m., while Sharmila was preparing morning food, wordy quarrel occurred between her and her husband/appellant/accused Sudalai Mani @ Mani as she sought money for paying school fees to their children and abused him as if he is having illegal intimacy with another lady and spending money for her and out of provocation the accused threatened his wife saying that her life would be finished in his hand and poured the boiling water on her and caused burn injuries in the presence of P.Ws.1 and 2, who are the kids of the accused and the deceased. Thereafter, the victim was taken to the nearby hospital by both the appellant and P.W.4. Thereafter, the victim was admitted in the Government Hospital, Thoothukudi.

2.2. On 06.12.2014 at about 10.20 a.m., P.W.8 - Dr.Praveen examined her and found that she suffered burn injuries on the face, chest, back and left thigh and sent her to Burn Injury Ward for treatment. The copy of the Accident Register recorded by him was marked as Ex.P.5 and the police intimation sent by him was marked as Ex.P.6.

2.3. P.W.10 - Sankaralingam, the Special Sub Inspector of Police was in charge of Out Post Police Station at Government Hospital and he received the intimation from P.W.8 and inform the same to P.W.9 - Manthiram @ Raja, Police Constable of Muthiahpuram Police Station at about 10.50 a.m. and he in turn inform the same to P.W.13, Palanisamy, Sub-Inspector of Police, Muthiahpuram Police Station at about 11.00 a.m. through phone. On receipt of the intimation, P.W.13 went to the Hospital. Since she was unable to tell anything, he went back to the police station and returned back to the hospital at 8.00 p.m. and recorded her statement from 8.30 p.m. to 10.00 p.m. and obtained her thumb impression. He also obtained the signature of P.W.3 - Mallika, mother of the deceased Sarmila in the statement. The said statement was marked as Ex.P.1. Thereafter, he went back to the police station and based on Ex.P.2, he has registered a case in Crime No.385 of 2014 under Section 326-A I.P.C. The printed F.I.R. was marked as Ex.P.10.

2.4. P.W.13 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and copy of the same to P.W.15 - Raju, Inspector of Police, Thermal Nagar Police Station and was incharge of Muthiahpuram Police Station and higher officials. P.W.15 at about 11.30 p.m. on 06.12.2014, received the F.I.R. and proceeded to the scene of crime and since it was dark he returned back and again on 07.12.2014 at about 6.30 a.m. in the presence of P.W.5 - Murugan and one Krishnan, he prepared the Observation Mahazar and the Rough Sketch marked as Ex.P.2 and 12 respectively. In the presence of the same witnesses, he recovered M.O.1 - Aluminium Vessel used for boiling the water under a cover of mahazar Ex.P.3 and sent the same to the Court. Then he went to the



and her mother - P.W.3 and recorded their statements. Then he examined Krishnan and P.W.5, Ranjini and other witnesses and recorded their statements. Then on the same day at 10.30 a.m. he arrested the accused near Muthiahpuram Ponnandi Nagar Pillaiyar Kovil and sent him to judicial custody. Then P.W.16 - Hariharan, Inspector of Police, Muthiah Puram Police Station took up the case for further investigation on 09.12.2014.

2.5.P.W.7 - Dr.Seenivasan, Assistant Professor, Government Medical College Hospital, Thoothukudi, treated the deceased and found her breath the last at 4.00 a.m. on 12.12.2014. The death intimation sent by him to the police was marked as Ex.P.4.

2.6.P.W.12 - Grade - I Police Constable received the death intimation of deceased Sarmila and handed over to P.W.16. at. 6.45 a.m. on 12.12.2014. Then, P.W.16 altered the F.I.R. from Section 326-A to 302 I.P.C. and sent the Alteration Report (Ex.P.12) to the Judicial Magistrate No.II, Thoothukudi. Then on the same day between 9.30 a.m. to 12.00 noon conducted inquest on the body of the deceased at Government Hospital, Thoothukudi in the presence of Panchayatars. The Inquest Report was marked as Ex.P.14. Then he sent a requisition for conducting postmortem on the body of the deceased through P.W.12.

2.7. P.W.14 - Dr.Manokaran was the Associate Professor and H.O.D., Department of Forensic Medicine attached to Government Medical College, Thoothukudi and he conducted postmortem on 12.12.2014 at 1.00 p.m. and found the following antemortem injuries:

"Superficial infected scald seen over the entire back of trunk, gluteal region, both arms, chest, lower abdomen, left thigh and right side of face. Pus material seen all over the lesions. On removal of pus, base of the wound red in colour. Hair over the lesion intact."

The postmortem report was marked as Ex.P.11. He opined that the deceased died of complications of superficial scald injuries.

2.8. P.W.16 continued the investigation and examined Krishnan, Shiny, P.W.2, P.W.1, P.W.8, P.W.7, P.W.11, P.W.12, P.W.14, P.W.6 and recorded their statements. After completing the investigation he had filed the Charge Sheet on 21.02.2015 on the file of the Court of Judicial Magistrate No.II, Thoothukudi, charging the appellant/accused for the aforesaid offence and the learned Judicial Magistrate No.2, Thoothukudi took it on file in P.R.C.No.25 of 2015.

2.9. The Committal Court issued summons to the accused and on his appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Thoothukudi, which in turn made over the same to the II Additional District and Sessions Court, Thoothukudi, which took it on file in S.C.No.402 of 2015. The appellant/accused was issued with summons and on his appearance, charge under Section 302 IPC has been framed.

2.10. The prosecution, in order to sustain its case, examined

Exs.P1 to P14 and also marked M.Os.1 & 2. The

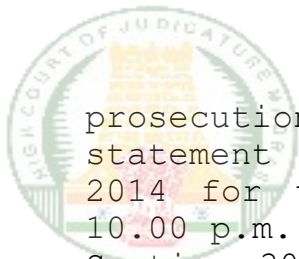


appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false. The appellant/accused did not examine any witness or marked any document on his side.

2.11. The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offence and sentenced him as stated above, vide impugned judgment dated 19.01.2017 and challenging the same, the present Criminal Appeal is filed.

3. Mr. R. Alagumani, learned counsel appearing for the appellant/accused would submit that it is the admitted case of the prosecution that there was an usual wordy altercation between the husband and wife and not able to tolerate the allegation that he was having illegal intimacy with another lady, without knowing that her wife has been preparing food by heating the water and whether it was a boiled water or not, lifted the aluminium vessel - M.O.1 and said to have been poured the water on the victim. However, it could be seen that if the appellant had any intention to cause the death of the victim, he knows very well that there were sharpened knives, usually available in the kitchen used for cutting vegetables, and the same could be used for killing her. However, the accused without knowing that whether it was a boiled water or not, lifted the vessel and poured the water on the deceased out of provocation and immediately after finding that his wife has sustained burn injuries, he took her to hospital. This has been proved by Ex.P.5 - copy of accident register, wherein it has been specifically mentioned that the appellant/husband has brought the victim Sarmila with burn injuries. P.W.8 Dr. Praveen also clearly deposed about the admission of the deceased in Government Hospital by her husband. This was corroborated by P.W.4 - Ranjini, who accompanied the deceased to the hospital. Therefore, when the appellant/accused after noticing that her wife suffered burn injuries because of pouring hot water, immediately without even running to escape from the police arrest, has taken his wife to hospital with the assistance of P.W.4, an independent witness, who is also their neighbour. The deceased took treatment for quite long time i.e., 7 days. P.W.7 - Dr. Seenivasan also deposed before the trial Court that there is a chance of infection from one patient to another in burn injury ward and there is chance for burn injury patients to die on account of secondary infection. Therefore, pouring of hot water cannot be the sole reason for the death of the accused.

4. He would further submit that the accused/appellant has established and even the prosecution also made it clear that the accused/appellant did not carry any weapon although sharpened weapons like knife etc., were available in the kitchen. Hence, the prosecution cannot register the case against the accused for the offence under Section 302 I.P.C. and the trial Court cannot convict the accused for the offence under Section 302 I.P.C. Although the

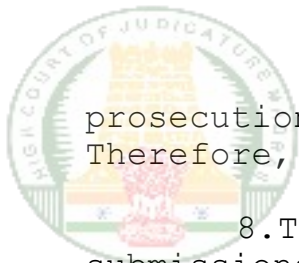


prosecution pleaded before the trial Court that on the basis of the statement of the victim a case was registered in Crime No.385 of 2014 for the offence under Section 362-A on 06.12.2014 at about 10.00 p.m. and consequent to her death it was altered into one under Section 302 I.P.C. on 14.12.2014, the said statement was not even attested by a doctor. Therefore, on a mere statement given by the victim, it is not open to the prosecution to rope in the accused/appellant for the commission of offence under Section 302 I.P.C. Even the Special Sub-Inspector of Police, who spoke before the trial Court as P.W.10 also deposed that the deceased was not in a speaking condition. That shows that the statement, said to have been recorded from the victim was recorded when she was unable to speak. The trial Court overlooking this false document wrongly convicted the appellant/accused, father of P.W.1 and P.W.2 to undergo life imprisonment for offence under Section 302 I.P.C., which is solely unreasonable, as a result of which, the poor children are rendered orphan.

5.Mr.R.Alagumani, learned counsel appearing for the appellant prays this Court to bring the gravamen charge 302 I.P.C. to 326 I.P.C., by drawing our attention to P.W.11 - Postmortem Certificate, wherein it is stated that the deceased would appear to have died of complications of superficial scald injuries. Hence, during the treatment for 7 days as inpatient, due to some carelessness of the Government Hospital doctors the deceased had died.

6.Further, the learned counsel appearing for the appellant would submit that when there was no intention to kill his wife viz., the deceased Sarmila and there was no evidence adduced by the prosecution except the evidence of P.Ws.1 and 2, who are all touted witnesses, it is not a case of conviction for offence under Section 302 I.P.C. Therefore, it has to be modified to one under Section 326 I.P.C., failing which P.W.1 and P.W.2, who had already lost their mother would also become orphan as the accused/appellant is also sentenced to life. In support of his submission, learned counsel appearing for the appellant relied on the decision of the Hon'ble Apex Court in **Chowa Mandal v. State of Bihar [AIR 2004 SC 1603]**.

7.On the other hand, Mr.R.Anandaraj, learned Additional Public Prosecutor appearing for the respondent/State would submit that there was frequent quarrel between the appellant and his wife deceased Sarmila. The very fact that the appellant has taken out the boiling hot water and poured over his wife in the presence of his children P.W.1 and P.W.2, clearly indicates that he has intention to kill his wife. Secondly, the evidence of P.W.1 and P.W.2, who are eyewitnesses and children of the appellant and the deceased, cannot be disbelieved. P.W.1 and P.W.2 spoken consistently against their own father that he has poured boiled water over the body of their mother, who was preparing morning food at 7.30 a.m. Hence, it is not open to the accused to claim that he was not having any intention to kill his wife. The trial Court has rightly come to the conclusion that the



prosecution has proved the case beyond all reasonable doubts. Therefore, such a finding cannot be disbelieved.

8.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record, including the impugned Judgment as well as the original records.

9.The question arises for consideration is whether the prosecution has proved the guilty of the accused beyond any reasonable doubt in the light of the evidence let in?

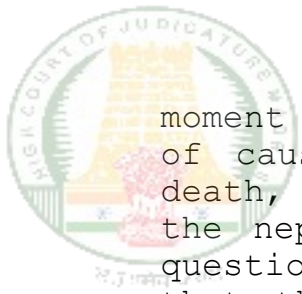
10.The quarrel between the husband/accused and wife/deceased has landed the husband/accused in the net of Section 302 I.P.C. Consequently, his two small children viz., P.W.1 and P.W.2 have lost their parents. The reason being their mother had died and their father has been convicted by the trial Court to undergo life imprisonment.

11.It is the admitted case of the prosecution that there was frequent quarrel between the accused and the deceased. On the fateful day, i.e., on 06.12.2014 at 7.30 a.m., when the deceased was boiling water for preparing food, it was at that time, the accused/appellant came into the kitchen. Immediately thereafter, the deceased/wife quarrelled with the appellant/ accused demanding tuition fees to be paid to their children and made some allegations against him that he is having illegal intimacy with another lady and he has been spending money for that lady. Immediately, the accused got provoked and without knowing the fact there was boiled water in the vessel, he has lifted the aluminium vessel and poured the hot water on her. Immediately after knowing the fact that his wife had fallen down due to pouring of the boiled water on her body, he arranged an hire auto, without running out from the situation, and taking the assistance of P.W.4, who is also a neighbour, an independent witness, rushed to a nearby private hospital and after finding that his wife has suffered 45% burn injuries and as advised without wasting any time taken her to the Government Hospital at Thoothukudi. That shows that he had no intention to kill her.

12.Secondly, as rightly pointed out by the learned counsel appearing for the appellant/accused, if the accused had any intention or plan to cause the death of the deceased, he would have definitely used better weapons, which are always available in the kitchen. The postmortem certificate Ex.P.11 also shows that when the deceased was getting treatment for 7 days in Government Hospital, Thoothukudi, she got infected, due to which, she succumbed to the injuries. Therefore, we cannot put the entire blame on the accused.

13.In **Chowa Mandal** (supra), cited by the learned counsel appearing for the appellant, it is stated as follows:

<https://hcservices.ecourts.gov.in/hcservices/> The incident in question occurred on the spur of the



moment without there being any intention of causing death or of causing such injury as they knew was likely to cause death, and was an act arising out of the enmity they had with the nephew of the deceased and aggravated by the unwanted questioning by the deceased. From the evidence it is clear that the act of the appellant cannot be construed as an act other than causing grievous hurt. In this background, we agree with the learned counsel for the appellants that in the absence of any motive, intention or knowledge as to their act which led to the death of the deceased the appellants can only be held guilty for an offence punishable under Section 326 read with 34, IPC since there is material to show that these 2 appellants did wield their lathis out of which at least one blow, if not both, struck the head of the deceased causing him grievous injury which ultimately led to his death."

A perusal of the said judgment would clearly show that if an incident occurred on a spur of the moment without there being any intention of causing death or of causing such injury as they knew was likely to cause death, it cannot be brought under Section 302 I.P.C. and the said ratio clearly shows that it is not justifiable to convict the accused under Section 302 I.P.C. and he has to be convicted for the offence under Section 326 I.P.C. On the fateful day, when the accused/appellant came into the picture, the deceased was boiling water for preparing food and she picked up a quarrel with him demanding tuition fees to be paid to their children's school with the further allegation that he is having illicit intimacy with another lady, therefore, he is not taking care of the household expenses. Immediately, the accused got provoked and without knowing the fact that there was a boiled water in the vessel, took the same and threw on her. Secondly, he did not carry any weapon, although sharpened weapons like, knife were available in the kitchen. Thirdly, the moment she fell down, the accused immediately took her to a nearby hospital by hiring an auto taking his neighbour for assistance. The deceased was also taking treatment for about seven days. Dr.Srinivasan, P.W.7 deposed before the trial Court that there is a chance of infection from one patient to another in burn injury ward and that may also be a cause of death. Finally there are children to be taken care of by him. All these mitigating circumstances clearly bring home the accused/appellant only under Section 326 IPC. Hence, this Court is inclined to modify the conviction and sentence imposed on the accused.

14.The learned Additional Public Prosecutor on instructions from the Jail authorities would submit that the appellant/accused has already undergone incarceration for 3 years 5 months and 6 days.

15.In the result, the Criminal Appeal is partly allowed by modifying the conviction under Section 302 I.P.C. to one under Section 326 I.P.C. and the sentence is modified to the period of



imprisonment already undergone and the fine amount paid already. The bail bonds executed by the accused shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

sj

To

- 1.The II Additional District and Sessions Judge,
Thoothukudi.
- 2.The Judicial Magistrate No.II,
Thoothukudi.
- 3.-Do- Thro' the Chief Judicial Magistrate,
Thoothukudi
4. The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli
- 5.The Inspector of Police,
Muthaiyapuram Police Station,
Thoothukudi District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-4031[F] dated 30/01/2020)

Crl. A. (MD)No.127 of 2018

29.01.2020

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