



BAIL SLIP

The Appellant/Accused namely Kavitha was released on bail as per order of this Court dated 09.10.2014 and made in MP(MD)No.1 of 2014 in CRL A(MD).No.277 of 2014 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 19.02.2020**JUDGMENT DELIVERED ON : 19.03.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**Crl.A.(MD)No.277 of 2014**

Kavitha

.. Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
Thirukattupalli Police Station,
Thanjavur District
Crime No.169 of 2012

... Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment of conviction and sentence imposed as against the appellant in the judgment dated 09.09.2014 in S.C.No.74 of 2013 on the file of the Principal Sessions Judge, Thanjavur and acquit the appellant of all the charges.

For Appellant : Mr.A.Sivasubramanian

For Respondent : Mr.K.Suyambulinga Bharathi,
G.A., (Crl. Side)**JUDGMENT**

The appellant has preferred the present Criminal Appeal, aggrieved by the Judgment and Conviction passed by the learned Principal Sessions Judge, Thanjavur, dated 09.09.2014 in S.C.74 of 2013, whereby, the appellant was convicted for the offence under Section 304(2) IPC., and sentenced her to undergo three years Rigorous Imprisonment.



2. The brief facts of the case, as projected by the prosecution, are as follows:

(i) P.W.1 Sasikumar had two wives viz., Jeya and Kavitha, who is the appellant herein; P.W.2 is the cousin of the appellant; P.W.3 to P.W.6 are the residents of Kaliyamman Kovil Street, Vahoor Village, where P.W.1 was residing; P.W.8 is the brother of the appellant and P.W.9 is the first wife of P.W.1. P.W.1 has three children viz., Gayathri, Vasanthakumar and Ganga through his first wife and has two children viz., Sunil, the deceased herein and Sumithra through his second wife, appellant. They were residing under one roof. Since the appellant wanted to live separately, there were some disputes and appellant had gone to her mother's house, situated in the same village, along with her son deceased Sunil, and daughter Sumithra.

(ii) On 10.07.2012, at about 12.00 noon, P.W.1 gone to the school to sign in the register for his children, at that time, the deceased Sunil asked some eatables from P.W.1, who bought and gave it to him. On knowing the same, at about 4.30 p.m., when the deceased came back home, the appellant had beaten him, asked how can he get eatables from his father, when the appellant was having estranged relationship with him, She poured kerosene, set fire on her minor son Sunil. Due to such action, the deceased Sunil sustained burn injuries, immediately admitted in the Tanjore Raja Mirasudhar Government Hospital, on 10.07.2018, at about 6.15 p.m. Latter, due to 96% burn injuries, he succumbed, he died on 13.07.2012, at about 10.30 a.m.

3. On 10.07.2012, at about 5.30 p.m., P.W.15 / Sub-Inspector of Police, on receipt of information through phone, visited the scene of occurrence, thereafter, proceeded to Raja Mirasudar Government Hospital, Thanjavur, enquired P.W.1 / father of the deceased Sunil, received Ex.P1/Complaint, thereafter, registered Ex.P12 / FIR in Crime No.169 of 2012, for an offence under Section 307 IPC., thereafter, records were handed over to P.W.19 / Inspector of Police, for further investigation.

4. On 10.07.2012, at about 9.20 p.m., on receipt of information from the Raja Mirasudar Government Hospital, Thanjavur, P.W.10 / Judicial Magistrate, Thanjavur, visited the hospital, recorded Ex.P15/ dying declaration of the deceased.

5. P.W.19 / Inspector of Police, conducted further investigation, proceeded to the scene of occurrence, where he prepared Ex.P3 / Observation Mahazar and drew Ex.P18 / rough sketch, in the presence of P.W.11 / Village Administrative Officer and recovered M.os.1 to 5, under Ex.P4 / mahazar. On completion of investigation, P.W.19 filed the final report against the



accused before the Court below.

6. In order to prove the case, on the side of the prosecution, 19 witnesses were examined as P.Ws.1 to 19 and marked 20 documents as Exs.P1 to P.20, besides 5 Material Objects were seized. On behalf of the defence, no witness and exhibits were marked.

7. On completion of examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and she denied them as false.

8. Considering the evidence available on record, the learned Principal Sessions Judge, Thanjavur, by Judgment dated 09.09.2011 found the accused guilty under Section 304(2) IPC., and sentenced the accused to undergo 3 years rigorous imprisonment. Challenging the said Judgment of conviction, the appellant preferred the present appeal.

9. The contention of the appellant is that the lower Court solely based its conviction on Ex.P17 / Accident Register, Ex.P2/ Dying Declaration and Ex.P19 / statement of the victim said to have been recorded by the Investigating Officer. In this case, except for P.W.1, the estranged husband of the appellant; P.W.9, the first wife of P.W.1 and P.W.7, the mother of P.W.1, who are all inimically deposed against the appellant. Their statements are not corroborated by evidence of independent witnesses. On the other hand, the neighbours, and other villagers viz., P.W.s2, 4, 5,6, and 8 have not supported the case of the prosecution. The presence of the appellant on the scene of the occurrence has not been proved. There are material contradictions in the statement of P.W.10 / Magistrate, who recorded the dying declaration / Ex.P2 and P.W.18 / the Doctor, attached to causality ward, who said to have attested as well P.W.15, the Sub-Inspector of Police, who had gone to the hospital and received the complaint.

10. It is further submitted by the learned counsel appearing for the appellant that P.W.1 had admitted that he reached the hospital at 5.30 p.m., and the Police reached at 7.00 p.m., and at that time, the deceased was conscious and was able to speak and the police had received the complaint and also affixed the thumb impression of the deceased. In this case, no such documents have been produced. On the other hand, in Ex.P19, there is no thumb impression. Ex.P9 is the got up document. There has been considerable delay in sending the FIR and complaint to the Court. There is a delay of FIR in reaching the Court, and the delay has not been explained. The arrest and confession of the



accused is highly doubtful and the lower Court has not given any reason for it. It is further submitted that in this case, there has been material alteration and correction / Ex.P4 mahazar and likewise in the Form 95 / Ex.P7 and no explanation had been given for the same. Further, from Ex.P7 it could be seen that the properties were not produced to the Court immediately casting serious doubt in the manner in which the articles were seized.

11. It is his further submission that the lower Court failed to take into consideration the evidence of P.W.18 / the Causality Medical Doctor, wherein he admits that in Ex.P17, there is no mention about the presence and smell of kerosene and the burn injuries were at breaches and the relatives viz., P.Ws.1, 7 and 9, were with the deceased from 6.40 p.m., to 9.30 p.m., when Ex.P2 / dying declaration was recorded and in all probability, the deceased could have been tutored during this time. Already P.Ws.1, 7 and 9 were against the appellant and they had tutored the deceased to implicate the appellant. No medical case history has been produced in this case. It is further submitted that the appellant is taking care of her only daughter, who is expected to attain puberty at any time and the appellant's presence during this period is indispensable and as a mother, she has to provide her daughter physical and psychological support and prayed for acquittal of the accused.

12. The learned Additional Public Prosecutor submitted that in this case, a minor boy of 6 years age was set on fire by his own mother, who is an adamant, arrogant lady, she knowing herself to be the 2nd wife of P.W.1 and residing as a joint family, she started making demand of share in the property, which was also acceded to and latter she wanted a house to be built immediately, P.W.1 had sought some time, enraged, she had taken her minor son to her parents place and was living separately. P.W.1 being the natural father of the deceased had met his son in the school, on the request of his son, purchased some eatables for which the appellant got offended, scolded and beaten the minor son and she poured kerosene and set him on fire.

13. On getting information, P.W.1 immediately rushed to the place; P.W.3 a neighbour immediately taken the deceased to the hospital, got him admitted. Police was informed from the hospital; P.W.1 had reached the hospital immediately and the deceased was in the condition to speak. P.W.10, the Judicial Magistrate had recorded the dying declaration / Ex.P2, which was attested by P.W.18. From Ex.P2 it is seen the fondness and wishes of the deceased to attend the school once he gets well, not knowing the fate is otherwise. Two days after, he had succumbed to the burn injuries, he died.



14. It is further submitted that P.W.7 and P.W.9 have stated about the relationship and conduct of the appellant. P.W.1 had given a details about the relationship, their children being in a joint family thereafter separated and the minor son Sunil being inflicted with burn wounds for getting eatables from P.W.1 and the appellant had never allowed the deceased to have any bondage with P.W.1 and his family and P.W.1 immediately rushed to the hospital.

15. P.W.11, the Village Administrative Officer, before whom, the observation mahazar and articles from the scene of occurrence had been seized. The arrest, confession and recovery had been proved through P.W.11. P.W.15 is the Sub-Inspector of Police, who had reached the hospital, recorded the statement of P.W.1 / Ex.P1. Thereafter, P.W.14 submitted the complaint and FIR to the Court immediately. P.W.16, the Forensic Scientific Officer had stated about the receipt of half burned trouser, gunny bag, matchstick, kerosene can and dotty, which were marked as M.Os.1 to 5.

16. P.W.18 is the causality Medical Doctor, who had admitted the victim and recorded accident register / Ex.P17. In this earlier document itself it is found that the victim had categorically stated about the burn injuries sustained by him and the reason being his mother. P.W.17 is the postmortem Doctor, who conducted autopsy had given postmortem report / Ex.P14, which go to show that the deceased sustained 96% of burn injuries and he succumbed to burn injuries. P.W.19 is the Investigating Officer, who, on receipt of FIR, had reached the scene of occurrence, enquired the witnesses, prepared observation mahazar, seized the articles present in the scene of occurrence, thereafter, reached the hospital, recorded the statement of the victim, arrested the accused, on her arrest, kerosene can / M.O.4 has been recovered.

17. On getting information of death of the victim, alteration report / Ex.P11 was prepared and inquest was conducted, inquest report is Ex.P20, thereafter, on getting the forensic report and postmortem report, examination of the witnesses charge sheet came to be filed. The trial Court, on proper analysis, taking into consideration the plight of the appellant and the fact that she has to take care of the other girl daughter, had given a lesser sentence, which need not be interfered with. Hence, prayed for dismissal of the appeal.

18. I have heard the submissions of the learned counsels appearing on either side and perused the materials on record.

19. Appellant is the 2nd wife of P.W.1, which is an
<https://hcmis.tn.gov.in/cases/> P.W.9 is the first wife of P.W.1. P.W.1 has three

P.W.1 to c

mentioned that "burn injuries inflicted by his mother".

<https://hcservices.legis.state.gov/hcservices>



occurrence, arrest of the accused, recovery of M.O.4 based on her confession. Forensic Report / Ex.P13 is in conformity to the case of the prosecution. Postmortem Report / Ex.P14 proves that the deceased had died due to 96% of burn injuries. Hence, by cogent evidence, the prosecution has proved the case. On scanning of Ex.P2 / dying declaration, there is nothing to disbelieve the same. It has been recorded by the Judicial Magistrate in the presence of the Doctor, Doctor had certified the same. The trial Court, on detailed analysis of the evidence had rightly convicted the accused. Taking into the consideration the attendant circumstances, had given a lesser sentence.

22. Considering the facts and circumstances of the case and considering the fact that the daughter of the appellant is attending school and the absence of her mother would have a cascading effect on her future and further, her daughter is expected to attain puberty at any time, at this stage, the presence of mother with her is very important, this Court is inclined to modify the sentence alone.

23. In the result, this Criminal Appeal is partly allowed and the Judgment and Conviction passed by the learned Principal Sessions Judge, Thanjavur, dated 09.09.2014 in S.C.74 of 2013, is confirmed and the sentence imposed on the appellant under Section 304(2) IPC., is modified to one year Rigorous Imprisonment, instead of three years.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

1.The Principal Sessions Judge,
Thanjavur.

2.The Judicial Magistrate, Thiruvaiyaru.

3. Do thro The Chief Judicial Magistrate, Thanjavur at Kumbakonam.

4.The Inspector of Police,
Thirukattupalli Police Station,
Thanjavur District



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

+1 CC to M/s.A.SIVASUBRAMANIAN, Advocate (SR-12535[F] dated
19/03/2020)

Pre-Deliver Judgment made in
Cr1.A. (MD) No.277 of 2014
19.03.2020

KG (CO)
TR(25.06.2020) 8P 7C