

Bail Slip

The Appellant/Sole Accused viz., Sahul Hameed enlarged on bail on the file of this Hon'ble Court on 06.03.2015 in MP(MD)No.1/2015 in Crl.A (MD)No. 61/2015.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A. (MD)No.61 of 2015

Sahul Hameed

: Appellant/Sole Accused

Vs.

The Inspector of Police,
Ayyampettai Police Station,
Thanjavur.

(Crime No.161 of 2013)

: Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the records in connection with the judgment of conviction and sentence ordered by the learned II Additional District & Sessions Judge, Thanjavur, in S.C.No.194 of 2013, dated 10.01.2014 and set aside the same.

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

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side)

JUDGMENT

The appellant is the sole accused in S.C.No.194 of 2013 and he was found guilty by the learned II Additional District and Sessions Judge, Thanjavur, by judgment dated 10.01.2014, for the offence under Section 307 IPC, convicted and sentenced to undergo rigorous imprisonment for seven years. Aggrieved over the same, the present appeal is filed.

2. The brief facts of the case are as follows:

2.1. The victim / PW1 is the wife of the appellant and their marriage was solemnized seven years prior to the occurrence. They are also having two children. After the marriage, the victim and the appellant were living with PW1's family at Sakkarapalli, Kumbakonam and this appellant is in the habit of assaulting his wife [PW1] often under the influence of alcohol. Therefore, it was decided to have a separate family in the nearby area. But, on knowing the conduct of the appellant / accused, the house owners refused to give



house for rent. In this circumstances, on 06.06.2013, at about 10.30 pm, for not arranging a separate house for rent, the appellant found fault with his wife [PW1], taken her to the bedroom, poured kerosene on her and also set fire. In this incident, the victim [PW1] suffered injuries on her Stomach, Hands and on her Neck. On hearing the alarm, the victim's mother [PW3] and sister [PW4] put off the fire, rescued her, arranged an Ambulance and admitted her for treatment at Thanjavur Medical College Hospital.

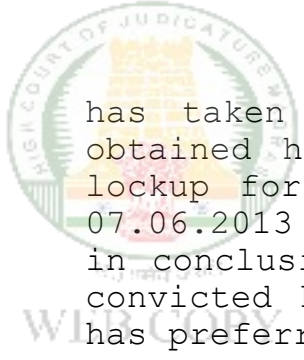
2.2. The victim was admitted in the Thanjavur Medical College Hospital by the Doctor [PW2] on 07.06.2013 at about 12.14 am and the Doctor [PW2] noted down burns over Chest, Arms and also in the Back. On the intimation from the Government Medical College Hospital, the Sub-Inspector of Police [PW9], Ayyampettai Police Station went to the Hospital on 07.06.2013, recorded the statement of PW1 in Ex.P1 and registered the case in Crime No.161 of 2013, for the offence under Section 307 IPC. The printed FIR is marked as Ex.P8.

2.3. On receipt of the information, Mr.Palanisamy, Inspector of Police [PW10] went to the place of occurrence on 07.06.2013 at about 10.00 am, prepared an observation mahazar [Ex.P9] and a rough sketch [Ex.P13] in the presence of PW7 and another. He also recovered a piece of burnt nylon saree [MO1], a match box [MO2] branded 'Double Parrot' under the cover of mahazar Ex.P10. He also examined the witnesses PWs.1, 3 & 4 from the Government Medical College Hospital, Thanjavur and arrested the accused on 07.06.2013 at about 02.00 pm near Melavaluthur Bus Stop, in the presence of PW8. Pursuant to his confession statement, he recovered a 5 Litre white plastic can [MO3] in Ex.P12. He also examined the Doctor [PW2], who admitted the victim and the Doctor [PW6], who issued the Wound Certificate and thereafter, filed the final report, as against this appellant for the offence under Section 307 IPC.

2.4. During the trial, the prosecution has examined as many as 10 witnesses, marked 13 documents, besides 3 material objects.

2.5. PWs.1, 3 & 4 are examined as eye witnesses to the occurrence. PW1 is the victim and also the wife of the appellant / accused. PW2 is the Doctor, who admitted the victim on 07.06.2013 and PW6 is the Doctor, who issued the Wound Certificate for the victim [PW1]. PW7 was examined for the purpose of observation mahazar and recovery of MOs.1 & 2 from the place of occurrence. PW8 was examined at the time of arrest and for recovery of MO3. PW9 is the Sub-Inspector of Police, who registered the First Information Report and PW10 is the investigation officer, who conducted the investigation and filed the final report.

2.6. 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. The accused has stated that he was not at home on 06.06.2013 and returned only during the night. The Police



has taken him on 06.06.2013 itself under the guise of enquiry, obtained his signature in a blank paper and detained him in the lockup for a day and foisted the case, as if he was arrested on 07.06.2013 and a confession statement was recorded. The trial Court, in conclusion of the trial, has found the appellant guilty and has convicted him as stated supra. As against the same, the appellant has preferred the instant appeal.

3. When the matter was taken up for hearing, there was no representation for the appellant and therefore, this Court, by order dated 05.06.2020, appointed Mr.S.Ravi, Advocate, as Legal Aid Counsel to represent the appellant to proceed with the appeal.

4. Heard Mr.S.Ravi, learned Counsel for the appellant / accused and Mr.A.Robinson, learned Government Advocate (Crl. Side) for the respondent / State.

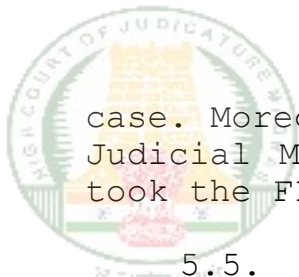
5. The learned Counsel for the appellant has raised the following points for the consideration of this Court:

5.1. The victim [PW1], on the injury sustained by her while cooking in the house, foisted this false case to eliminate this appellant from her matrimonial life. The motive has not been established by the prosecution. According to the prosecution, for not arranging a house for rent, the appellant on 06.06.2013 took her to the bedroom, poured kerosene and set her ablaze. A white plastic can as kerosene can [MO3] was recovered from the accused and a burnt nylon saree [MO1] and a match box [MO2] were also recovered in this case. PW7, the mahazar witness, has stated that MO3 was recovered from the bedroom, but the same is said to have recovered, as per the prosecution, from the accused pursuant to his confession statement.

5.2. Both the Doctors, viz., PW2, who admitted the victim on 06.06.2013 and PW6, who issued the Wound Certificate, have stated that the injuries sustained by the victim are possible due to an accident while cooking.

5.3. The learned Counsel has also demonstrated from the complaint [Ex.P1] and the First Information Report [Ex.P8]_that the very genesis of this complaint itself is doubtful. According to him, the earliest information has been suppressed and Ex.P1 is substituted to implicate the appellant as an accused.

5.4. The Sub-Inspector of Police [PW9] and the Inspector of Police [PW10] admit in their evidence that they have visited the occurrence place on 06.06.2013 at 10.30 pm itself, even before the victim was taken to the Hospital. PW9 has further stated that the accused was also taken to the Hospital on the same day. While so, the case was registered only on 07.06.2013 at about 09.00 am, as if on the intimation from the Hospital, the Sub-Inspector [PW9] visited the occurrence place and recorded the statement and thereafter, registered the



case. Moreover, the FIR registered at 09.00 am reached the concerned Judicial Magistrate Court only at 07.45 pm and the Constable, who took the FIR to the Magistrate Court, was not examined in this case.

5.5. Therefore, according to the learned Counsel for the appellant, the case has been foisted by taking advantage of a fire accident that occurred while cooking, to eliminate this appellant from their family. Moreover, there is no independent witnesses in support of the prosecution and the available witnesses are either close relatives or official witnesses. Therefore, he prays for interference.

6. Per contra, the learned Government Advocate (Crl. Side) has made his submissions as follows:

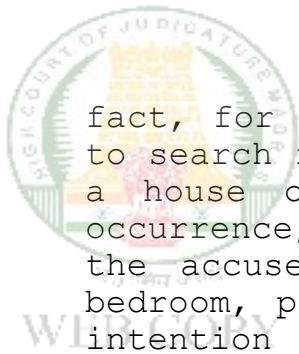
6.1. PWs.1, 3 to 5 have clearly stated that the accused is in the habit of consuming liquor and used to assault his wife often. In view of this habit, no one was willing to give house for rent for him and even for that, he found fault with his wife [PW1], assaulted her and on that day, poured kerosene over her with an intention to kill her. Therefore, the prosecution has clearly established the motive aspect.

6.2. No doubt, there is no independent witness in this case. But, the occurrence was taken place at about 10.30 pm and therefore, the non-examination of an independent witness at the odd hours cannot be a ground to disbelieve the prosecution case. He further submitted that immediately after the occurrence, the victim [PW1] was taken to the Hospital and was also admitted in the Hospital on 07.06.2013 at about 12.14 am and the Doctor [PW2], in the Accident Register [Ex.P2], has recorded the reason for the occurrence and the nature of injury suffered by the victim. This evidence of the Doctor [PW2] is also supported by the evidence of the Doctor [PW6], who treated the victim.

6.3. Apart from these witnesses, the evidence of PWs.1, 3 to 5 clearly establish the case of the prosecution that the accused under the influence of alcohol assaulted the victim on the date of occurrence. PW8, the witness for the arrest and recovery, has also supported the case of the prosecution that in his presence, the accused was arrested and also speaks about the recovery of the kerosene can [MO3]. Therefore, the prosecution has established their case beyond any reasonable doubt and the trial Court has rightly appreciated the evidence and convicted the accused for the offence under Section 307 IPC and he prays for dismissal.

7. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

8. The case of the prosecution is that the accused was living with his wife [PW1] in his mother-in-law's [PW3] house and their



fact, for renting a separate family, the accused suggested his wife to search for a house, but the house owners were not willing to give a house owing to the conduct of the accused. On the date of occurrence, when PW1 informed about the stand of the house owners to the accused, the accused found fault with PW1, took her to the bedroom, poured kerosene over her and also set her ablaze, with an intention to kill her. In the course of the incident, she also suffered some injuries on her Stomach and on her Hands.

9. The occurrence was taken place on 06.06.2013 at about 10.30 pm. The victim was also taken to the Hospital and was admitted on 07.06.2013 around 00.14 hours. According to PW1, the Sub-Inspector of Police [PW9] and Inspector of Police [PW10] had also visited the occurrence place prior to the admission in the Hospital. The distance between the place of occurrence and the police station is nearly 3kms. Though the Police is aware of this incident on 06.06.2013 at 10.30 pm itself, the case was registered only on the next day, ie., on 07.06.2013 at 09.00 am, as if the case was registered on the intimation received from the Hospital. The First Information Report registered at about 09.00 am has also reached the concerned Judicial Magistrate at 07.45 pm, with a delay of more than 10 hours and as rightly pointed out by the learned Counsel for the appellant, the concerned Constable who handed over the printed First Information Report to the Magistrate was not examined, though the case was registered for the offence under Section 307 IPC.

10. The occurrence was taken place in the house of the victim / PW1. Even according to the prosecution, it is a Compound House, where others are also residing. Admittedly, excepting the victim [PW1], her mother [PW3], sister [PW4] and brother [PW5], no independent witness was examined in this case. The Doctors [PWs.2 & 6], who examined the victim, have also admitted in their evidence that the possibility of the injury while cooking cannot be ruled out. MO1 is the nylon saree and this was recovered from the place of occurrence as a piece of burnt saree. The nylon saree is easily inflammable. Admittedly, on the date of occurrence, the victim [PW1] was wearing nylon saree and the possibility of sustaining injury accidentally while cooking, as suggested by the learned Counsel for the appellant, cannot be ruled out. Both PWs.3 & 4 admit that they are having a kerosene stove in their house.

11. According to the prosecution, the accused with an intention to kill his wife, taken her from the backyard to the bedroom in the first floor and thereafter, poured kerosene and set fire. The evidence is not clear as to how he got the kerosene can to the bedroom in the first floor and there is a contradictory evidence available in the prosecution with regard to this kerosene can also. The mahazar witness [PW7] has stated that this kerosene can was found outside the occurrence place, whereas, the prosecution case is that the kerosene can was recovered from a bush, on the next day, confession statement of the accused. MO3 is a 5



Litre plastic can, but there is no reference as to the smell of kerosene in it.

12. Moreover, in the place of occurrence, excepting the injuries suffered by the victim on her Stomach and Hand, there is no other damage to any of the articles in the bedroom. According to the Doctor [PW6], the victim [PW1] suffered 25% burn injury and has issued the Wound Certificate [Ex.P3]. But even in this Certificate [Ex.P3], there is a correction over the percentage of the injury as 22% and later struck off and over written as 25%. But, according to the Doctor [PW2], the victim suffered injury only on her Chest, Arms and Back.

13. The arrest and confession is also not proved beyond any reasonable doubt. PW8, the witness for arrest and recovery, would admit that he found the accused in the Police Station and the sign was obtained from him only in the Police Station and even before he reached the Police Station, the accused was there.

14. In view of the contradictions discussed supra, this Court is of the view that it is not safe to sustain the conviction imposed by the trial Court. The prosecution has not established the case beyond any reasonable doubt and the appellant / accused is entitled for the benefit of doubt. Accordingly, the conviction and sentence imposed by the learned II Additional District and Sessions Judge, Thanjavur, in S.C.No.194 of 2013, dated 10.01.2014, are set aside. The appellant / accused is directed to be set at liberty forthwith, unless his detention is required in connection with any other case / proceedings. Bail bond, if any executed, shall stand terminated and fine amount, if any paid, shall be refunded.

In fine, this Criminal Appeal is allowed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

To

1.The II Additional District and Sessions Judge,
Thanjavur.

2.Do-Thro

The Principal Sessions Judge,
Thanjavur.

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