



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	PRONOUNCED ON
04.03.2020	20.03.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.A. (MD) No.297 of 2018

R.Mayakannan

Appellant/Accused

Vs.

State represented by
the Inspector of Police
Vadipatti Police Station
Madurai District
(Cr. No.28 of 2013)

Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment and order dated 29.06.2016 passed in S.C.No.337 of 2015 on the file of the I Additional District and Sessions Court, Madurai.

For appellant

Mr. K.K. Samy

For respondent

Mr. M. Chandrasekaran
Additional Public Prosecutor

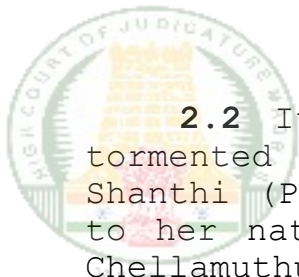
- - - - -

JUDGMENT

The legality and validity of the judgment and order dated 29.06.2016 passed by the I Additional District and Sessions Judge, Madurai in S.C. No.337 of 2015, is under assail in this criminal appeal.

2 The facts in brief leading to the institution of this criminal appeal are as follows:

2.1 The appellant Mayakannan married Shanthi (P.W.1) and set up his matrimonial home in Thanichchayam Village. Through the wedlock, Shanthi (P.W.1) begot a daughter, Rathi (P.W.6) and a son, Ashok (deceased). The appellant's elder brother Shankar (P.W.3) was living nearby.



2.2 It is alleged that the appellant was addicted to liquor and tormented his wife Shanthi (P.W.1). Unable to put up with him, Shanthi (P.W.1) would frequently quarrel with the appellant and go to her natal home in Vairavanatham Village to be with her father Chellamuthu (P.W.2).

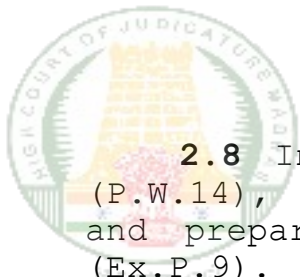
2.3 The incident in this case occurred on 20.01.2013. Six months prior to the date of occurrence, Shanthi (P.W.1) left the appellant and along with her two children, went to her father Chellamuthu's (P.W.2's) house in Vairavanatham Village and stayed there.

2.4 For the 2013 Pongal festival (which falls every mid January), Shanthi (P.W.1) took her two children to the house of her sister-in-law (appellant's sister), viz., Kanchana (not examined) in Vadipatti, left her children there and returned to her natal home in Vairavanatham Village.

2.5 While so, on 20.01.2013, around 2 o' clock in the afternoon, the appellant went to his sister Kanchana's house in Vadipatti, picked up a quarrel with her, forcibly brought his two children to his house in Thanichchayam Village and deciding to commit suicide *en masse*, poured kerosene on his two children and himself and committed immolation. When he attempted to set fire, Rathi (P.W.6) took to her heels to her elder paternal uncle Shankar's (P.W.3's) house nearby and thus, escaped. However, the appellant set fire to his 6 year old son Ashok and to himself. Rathi (P.W.6) alerted Shankar (P.W.3) and by the time Shankar (P.W.3) could come, Ashok and the appellant had suffered extensive burns. '108' ambulance was summoned and both the appellant and Ashok were rushed to the Government Rajaji Hospital, Madurai, where, Dr. Jayaraj (P.W.9) examined Ashok at 4.30 p.m. on 20.01.2013 and found 75% burns on his body and so, he admitted him as in-patient in the Burns Ward. The accident register copy pertaining to Ashok was marked as Ex.P.4. Dr. Jayaraj (P.W.9) examined the appellant at 5.16 p.m. on 20.01.2013 and at that time, the appellant told him (P.W.9) that he attempted to commit suicide by self-immolation. He was found with 30% burns and was admitted to the Burns Ward.

2.6 On receiving information, Shanthi (P.W.1) rushed to the hospital and gave a complaint statement (Ex.P.1), which was recorded by Veera Raghavan (P.W.13), Special Sub-Inspector of Police. In the said complaint statement (Ex.P.1), she narrated the sequence of events as told to her by her daughter Rathi (P.W.6).

2.7 Based on the complaint statement (Ex.P.1), Veera Raghavan (P.W.13) registered a case in Cr. No.28 of 2013 at 22.30 hrs. on 20.01.2013 for the offences under Section 307 and 309 IPC and prepared the printed FIR (Ex.P.8), which reached the jurisdictional Magistrate at 11.30 a.m. on 21.01.2013, as could be seen from the endorsement thereon.



2.8 Investigation of the case was taken over by Shiva Shankaran (P.W.14), Inspector of police, who went to the place of occurrence and prepared the observation mahazar (Ex.P.2) and rough sketch (Ex.P.9).

2.9 From the place of occurrence, Shiva Shankaran (P.W.14) seized a two-litre Fanta bottle (M.O.1) and a match box (M.O.2) under cover of mahazar (Ex.P.3) in the presence of witnesses, to wit, Muthukrishnan (P.W.7) and Selvam (not examined).

2.10 Ashok succumbed to the injuries on 24.01.2013 at 7.30 a.m., pursuant to which, the case was altered to one under Sections 302 and 309 IPC, vide alteration report (Ex.P.10).

2.11 Inquest was conducted over the body of the deceased child and the inquest report was marked as Ex.P.11. Dr. Natarajan (P.W.10) performed autopsy on the body of the deceased child and in his evidence as well in the post-mortem report (Ex.P.7), has opined as follows:

"OPINION:

THE DECEASED WOULD APPEAR TO HAVE DIED OF EXTENSIVE SUPERFICIAL BURNS OF ABOUT 75% AND ITS COMPLICATIONS THEREOF"

2.12 Dr. Suresh Kumar (P.W.11) treated the appellant for his burns and the accident register copy pertaining to the appellant (Ex.P.5) shows that the appellant had suffered 40% burns.

2.13 The appellant was arrested on 20.04.2013. After examining witnesses and collecting various reports, the Investigating Officer (P.W.14) filed a final report in P.R.C. No.29 of 2014 before the District Munsif-cum-Judicial Magistrate, Vadipatti, for the offences under Sections 302, 307 and 309 IPC against the appellant.

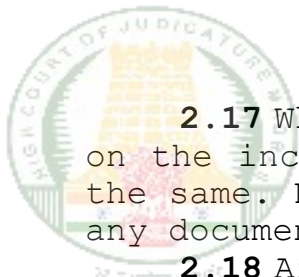
2.14 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.337 of 2015 and was made over to the I Additional District and Sessions Court, Madurai, for trial.

2.15 The trial Court framed charges against the appellant under the following provisions:

- Section 302 IPC for causing the death of Ashok;
- Section 307 IPC for attempting to murder Rathi (P.W.6); and
- Section 309 IPC for attempting to commit suicide.

and when questioned, the appellant pleaded "not guilty".

2.16 To prove the case, the prosecution examined 14 witnesses and marked 12 exhibits and 2 material objects.



2.17 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

2.18 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 29.06.2016 in S.C. No.337 of 2015, acquitted the appellant of the charge under Section 309 IPC, but, convicted and sentenced him as under:

Provision under which convicted	Sentence
S.302 IPC	Life imprisonment and fine of Rs.5,000/-, in default to undergo simple imprisonment for one year.
S.307 IPC	Rigorous imprisonment for 7 years and fine of Rs.5,000/-, in default to undergo simple imprisonment for six months.

The aforesaid sentences were ordered to run concurrently.

2.19 Challenging the aforesaid conviction and sentences, the accused is before this Court.

3 Heard Mr. K.K. Samy, learned counsel for the appellant and Mr.M. Chandrasekaran, learned Additional Public Prosecutor appearing for the respondent/State.

4 Shanthi (P.W.1), in her evidence, has stated about her marriage with the appellant, birth of Rathi (P.W.6) and Ashok to her and also the fact that she left her two children for the 2013 Pongal festival in the house of her sister-in-law Kanchana, in Vadipatti and returned to her natal home in Vairavanatham Village. To this extent, her evidence is direct in nature. Beyond that whatever she had stated about the incident in question is only hearsay, as she had learnt about it from her daughter, Rathi (P.W.6). In the cross-examination, she admitted that after the appellant was released on bail, he started living with her and she begot a son, Santosh.

5 The prosecution has proved the following facts beyond cavil.:

- The appellant is the husband of Shanthi (P.W.1) and they have two children, to wit, Rathi (P.W.6) and Ashok.
- The appellant hails from Thanichchayam Village and Shanthi's (P.W.1's) natal home is in Vairavanatham Village.
- On 20.01.2013, the appellant and Ashok suffered burn injuries and were admitted to the Government Rajaji Hospital, Madurai, where, Ashok died on 24.01.2013 and the appellant survived.



6 The nub of the case is whether the appellant caused the death of his son Ashok and attempted to commit the murder of his daughter, Rathi (P.W.6).

7 The entire prosecution case hinges on the evidence of Rathi (P.W.6). Rathi (P.W.6) was nine years old when she was examined in the trial Court on 11.12.2015. The trial Judge has posed some preliminary questions to her in order to ascertain her competency to testify and after satisfying herself of it, she has recorded her evidence.

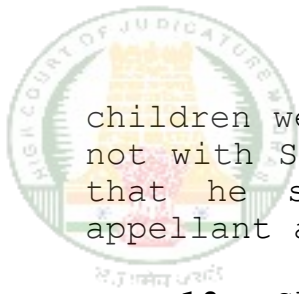
8 The free English translation of the evidence of Rathi (P.W.6) is as follows:

"I am 9 years old. In my house, my mother Shanthi, my father Mayakannan and my younger brothers Ashok and Santosh are there. My younger brother Ashok had died. My father brought us from our aunt's house, poured kerosene on me, on my younger brother Ashok and on himself and asked us to pray to the Almighty. Thereafter, he took a matchbox and set fire on my brother and himself. I fled. I was 6 years old then. My younger brother also came running behind me. My aunt Pushpam and my senior paternal uncle, whose name, I do not know, covered my brother with a sack, on seeing which, I started crying. My brother's head and chest portion were burnt. The police enquired me."

In the cross-examination, Rathi (P.W.6) has stated as follows:

"I have a little love for my father. I love my mother as well. This is Court. I have come here to say what was enquired. I went to the police station. I was enquired there only."

9 Shankar (P.W.3), in his evidence, has stated that he is residing in Thanichchayam Village; Mayakannan (appellant) is his younger brother; Shanthi is Mayakannan's wife; they had two children, viz., Rathi and Ashok; prior to the incident, Mayakannan and Shanthi were living in Samayanallur, from where, they relocated to Thanichchayam; Mayakannan and Shanthi used to quarrel frequently and Shanthi would go to her parents' house leaving the children with Mayakannan; Mayakannan was in the habit of consuming liquor; on 20.01.2013, around 4.00 p.m., when he was at home, there was a commotion outside his house; when he went out, he saw Ashok in flames running towards his (P.W.3's) house; he (P.W.3) extinguished the fire; at that time, he did not know that his brother (appellant) also had suffered burns; he called '108' ambulance and thereafter, he saw his brother (appellant) coming out from the waterway with burn injuries after having the fire on him doused; he (P.W.3) took both of them (appellant and Ashok) in the ambulance to the hospital; 4 days later, Ashok died; he does not know as to how the incident had occurred. Strangely, this witness was declared hostile by the prosecution because he had stated in the chief-examination that the

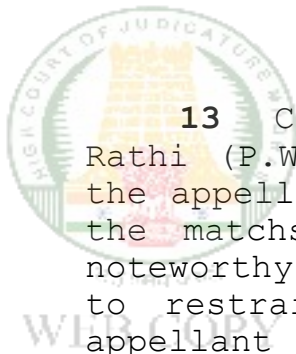


children were living with the appellant in Thanichchayam village and not with Shanthi (P.W.1). However, this witness has clearly stated that he saw Ashok ablaze, put off the fire and admitted the appellant and Ashok to the hospital.

10 Shankar (P.W.3) substantially corroborates the evidence of Rathi (P.W.6). The fact that the appellant and Ashok underwent treatment in the Government Rajaji Hospital for burns and the further fact that Ashok died on 24.01.2013 have been proved beyond a peradventure via the evidence of Dr. Jayaraj (P.W.9) and Dr. Suresh Kumar (P.W.11). Ergo, this Court has no good reason to disbelieve the evidence of Rathi (P.W.6) and Shankar (P.W.3).

11 The learned counsel for the appellant contended that the appellant did not have the intention to commit the murder of his son Ashok, but, it is just out of sheer frustration that he wanted to end his life sojourn and take his children, whom he loved very much, with him, to the other world. He also relied upon the evidence of Shankar (P.W.3) to contend that Shanthi (P.W.1) would frequently quarrel with the appellant and go to her natal house leaving the children with him (appellant) and that had triggered a sort of depression in the appellant's mind, which had impelled him to take this drastic step.

12 There does appear to be some force in the above submission of the learned counsel for the appellant. It is not known as to why the prosecution did not examine Kanchana, from whose house, the appellant had brought his two children with him, after a quarrel. The fact that the appellant was very much attached to his children is evident from the testimony of Rathi (P.W.6). Further, from the evidence of Shanthi (P.W.1), it is limpid that after the appellant was released on bail, they reconciled and a son was born and he was named Santosh. Rathi (P.W.6) requires to be lauded for speaking the truth in the Court, albeit she must have presumably come to the Court along with her father and mother, to give evidence against her father. It is obvious that she was not tutored by anyone to resile from her earlier statement or to protect her father. In the opinion of this Court, the appellant had committed the offending acts more out of frustration than out of malice. He loved his children so intensely that he was unable to bear frequent separation from them owing to his wife's quarrelsome conduct. Shanthi (P.W.1) has admitted that she used to frequently quarrel with the appellant and go to her natal home leaving her children either with her parents or her sister-in-law Kanchana. All this has been bothering the appellant and troubling him for quite some time. Viewed from that angle, this Court is of the opinion that the act of the appellant would fall within the third limb of Section 299 IPC, punishable under Section 304(II) IPC and not Section 302 IPC.



13 Coming to the charge under Section 307 IPC, the evidence of Rathil (P.W.6) shows that all the three got doused in kerosene and the appellant asked them to pray to God and only after that, he lit the matchstick and set fire on Ashok and himself. Yet another noteworthy aspect in this case is that the appellant did not attempt to restrain Rathil (P.W.6) from escaping. As stated above, the appellant did not even intend to commit the murder of his two children at all. He only wanted to cause the death of the trio, including himself, so that they all could escape from the unbearable pangs of suffering caused by Shanthi's (P.W.1's) quarrelsome behaviour, in this earthly life. In such perspective of the matter, the appellant is acquitted of the charge under Section 307 IPC.

14 To sum up:

- the conviction and sentence imposed by the trial Court on the appellant for the charge under Section 307 IPC are set aside and as a sequel, he is acquitted of the said charge;
- the conviction and sentence imposed on the appellant for the charge under Section 302 IPC are set aside and instead, he is convicted of the offence under Section 304(II) IPC and sentenced to undergo 7 years rigorous imprisonment; and
- the sentence of fine of Rs.5,000/- and the default clause thereto imposed by the trial Court are confirmed.

Resultantly, this criminal appeal is allowed in part, as indicated in paragraph 14, supra. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

/ /2020

Sub Assistant Registrar

To

1 THE FIRST ADDITIONAL SESSIONS
AND DISTRICT JUDGE, MADURAI.

2 THE JUDICIAL MAGISTRATE,
VADIPATTI.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI.



4 THE INSPECTOR OF POLICE,
VADIPATTI POLICE STATION,
MADURAI.

5 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.K.K.Samy, Advocate SR.No. 12665

Judgment made in
Crl.A. (MD) No.297 of 2018

cad
JM/12.05.2020/8P/8C