



BAIL SLIP

Mahalakshmi, Female(32/2018), W/o. Padithurai, was released on bail, as per order of this Hon'ble Court in CRL.MP(MD).No. 5667 of 2019 in CRL.A.(MD).No. 7 of 2019 dated 12/07/2019.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.10.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

Crl.A.(MD).No.7 of 2019

Mahalakshmi ... Appellant /Accused
-vs-

State through
The Inspector of Police,
Thirunagar Police Station,
Madurai District.
(in Crime No.94 of 2010) ... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the entire records connected to the judgment in S.C.No.315 of 2011 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai (FAC), dated 29.11.2018 and set aside the conviction and sentence imposed against the appellant.

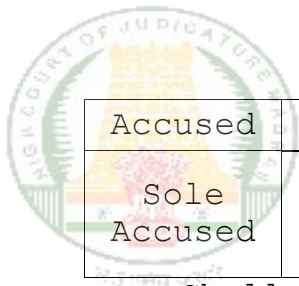
For Appellant : Mr.R.Alagumani
For Respondent: Mr.A.Thiruvadikumar
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant is the sole accused in S.C.No.315 of 2011, on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai (FAC), and she stood charged and tried for the offence under Section 302 of I.P.C.

2. The trial Court, vide impugned judgment dated 29.11.2018, has convicted the appellant herein for the above said offence and imposed the sentences, thus:



Accused	Conviction	Sentence
Sole Accused	U/s. 302 of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment.

Challenging the same, the present appeal has been filed.

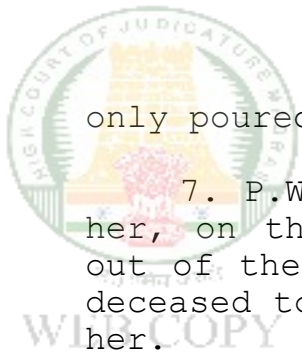
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3. The case of the prosecution is that, the deceased in this case one Amutha is the second wife of P.W.2, and the accused is his first wife. Both the deceased and the accused were living together with P.W.2. There was a quarrel between them on 20.03.2010, at about 3.30 p.m., in which the accused poured kerosene and set fire on the deceased. Immediately, P.W.1, a neighbour, took her in 108 ambulance to the Government Rajaji Hospital, Madurai, where, P.W.9, a Doctor, admitted her in the Burn Injury Ward and issued an Accident Register, Ex.P4. Thereafter, P.W.14, another Doctor in the Burn Injury Ward, has given a treatment to the deceased. In the meantime, based on the statement given by P.W.1, a F.I.R has been registered by one Alagar, a Police Constable, at about 3.00 a.m., for the offence under Section 307 of I.P.C., and sent the same to the concerned Judicial Magistrate Court, on the next day morning, at about 10.00 a.m. Subsequently, at about 6.30 a.m., the deceased succumbed to injuries.

4. P.W.16, the Inspector of Police in the respondent police station, commenced the investigation and filed an alteration report, Ex.P12, altering the offence under Section 302 of I.P.C., and proceeded to the scene of occurrence at about 10.30 a.m., where he prepared Observation Mahazar, Ex.P13 and Rough Sketch, Ex.P14 and recovered a Plastic Bottle, Paint Container, and Burnt Saree, M.Os.1 to 3. Then, he conducted inquest on the dead body of the deceased in the hospital, recorded the statements of the witnesses and prepared the Inquest Report, Ex.P16. On 23.03.2010, he arrested the accused. On such arrest, the accused voluntarily given a confession. Then, he remanded the accused to Judicial custody. In the mean time, P.W.16 was transferred and P.W.17, the Inspector of Police, continued the investigation and recorded the statement of other witnesses and on completion of investigation, he filed a final report for the offence under Section 302 of I.P.C.,

5. Based on the above materials, the trial Court framed the charge against the accused as mentioned above. However, the appellant/accused has denied the same. The prosecution in order to sustain their case, examined 17 witnesses, marked 17 documents and also produced 3 material objects.

6. Out of the said witnesses, P.W.1, neighbour of the deceased, who is the author of the complaint, turned hostile. P.W.2 is the husband of the deceased and the accused. According to him, after the death of the deceased, he went to the hospital. He, however stated that the deceased, when she was alive, told him that the accused



only poured the kerosene and set fire on her.

7. P.W.3 is the another neighbour of the deceased. According to her, on the date of occurrence, after hearing the noise, she went out of the house and saw the deceased with burn injuries where the deceased told her that the accused poured kerosene and set fire on her.

8. P.W.4 is the another neighbour of the deceased. According to her, both the accused and the deceased residing in P.W.2's house and they are living cordially, after the occurrence, she saw the deceased with burn injuries and she told her that the accused poured kerosene and set fire on her.

9. P.W.5 is also a neighbour of the accused. According to him, after the occurrence, he along with P.W.1 and the accused took the deceased to the Government Rajaji Hospital, Madurai, where she told him that only the accused poured kerosene and set fire on her.

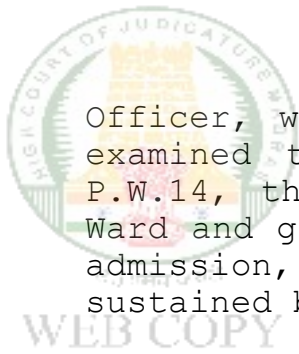
10. P.W.6 is the mother-in-law of the accused and the deceased. According to her, she went to the hospital at about 2.00 p.m., where the deceased told her that only the accused poured kerosene and set fire on her. P.W.7 is the mother of the accused spoke about earlier quarrel between the accused and the deceased.

11. P.W.8, the Village Menial, who is the witness to the Observation Mahazar, turned hostile. P.W.9, the Doctor, who admitted the deceased in the Government Rajaji Hospital, Madurai and issued an Accident Register, Ex.P4.

12. P.W.10, the Village Administrative Officer, who is the witness to the Observation Mahazar and recovery of M.Os.1 to 3. P.W.11, the Doctor, who conducted postmortem autopsy on the dead body of the deceased and issued the Postmortem Certificate, Ex.P8 and found the following injuries:

*"The following ante mortem injuries are noted on the body:
Extensive superficial burns involving scalp in front;
whole of face in patches; front, sides and back of neck
in patches; front, sides and back of chest and abdomen;
whole of both upper limbs and whole of both lower limbs.
The base of the burnt area was reddish in colour. Peeling
and balckening of skin noted all over the burnt areas in
patches. Partial degloving of skin noted on both hands and
feet. Singeing of hairs noted on scalp in front, eyebrows,
eyelashes, armpits and pubic region. The unburnt scalp
hair emits smell of kerosene."*

13. P.W.12 is a Head Constable, who handed over the F.I.R. to the concerned Judicial Magistrate Court. P.W.13 is a Scientific
<https://hcservices.ecourts.gov.in/hcservices/>



Officer, working in the Regional Forensic Laboratory, Madurai, who examined the visceral part of the deceased and given a report. P.W.14, the Doctor, who admitted the deceased in the Burn Injury Ward and given a treatment to her. According to him, at the time of admission, the deceased told him that she does not know how she sustained burn injury.

14. P.W.15 is a Head Constable who identified the body for Postmortem. P.W.16 is the Inspector of Police, who commenced the investigation, arrested the accused and recovered the material objects. P.W.17, Inspector of Police, who continued the investigation and completed the same and filed a final report.

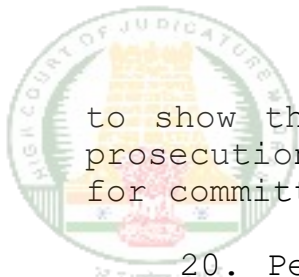
15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, the accused did not chose to examine any witness nor did she mark any documents on her side.

16. The trial Court, on consideration of the oral and documentary evidence, has found the appellant/accused guilty of the charge framed against her and imposed the sentence as stated above. Now, challenging the same, the present appeal has been filed.

17. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

18. There is no eyewitness to the occurrence. The prosecution mainly relied upon the oral dying declaration given by the deceased to P.Ws. 3, 4 and 5 and all are neighbours of the deceased and the accused. According to P.W.3, after the occurrence, she came out of the house and saw the deceased with burn injuries, at that time, the deceased told her that the accused poured kerosene and set fire on her. Likewise, P.W.4 also seen the deceased, after the occurrence, wherein the deceased said to have told her that the accused poured kerosene and set fire on her. P.W.5 is said to have taken the deceased along with P.W.1 and the accused to the Government Rajaji Hospital, Madurai in 108 ambulance. According to him, the deceased told him that the accused poured kerosene and set fire on her. Another eyewitness P.W.1, who is said to have taken the deceased to the Government Rajaji Hospital, Madurai and given the complaint, turned hostile. Relying upon those evidences, the prosecution sought to sustain their case.

19. The learned counsel appearing for the appellant would submit that P.Ws.3, 4 and 5 are all neighbours of the deceased and they are all interested witnesses. Their testimonies have been contradicted by the evidence of P.W.9, the Doctor, who has admitted the deceased in the Government Rajaji Hospital, Madurai. That apart, P.W.3, in the cross-examination admitted that both the deceased and the accused were living together peacefully and there is no evidence



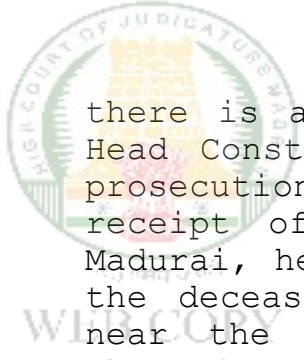
to show that there was a quarrel between them and, therefore, the prosecution has failed to establish the motive against the accused for committing the crime.

20. Perusal of the cross-examination of P.W.3 would go to show that both the deceased and the accused were living in the same house happily and only the deceased is said to have taken care of the children of the accused. Further, she has stated that at the time of occurrence, her son was suffering from Chickenpox and therefore, she remained inside the house and she did not come out of the house and she only heard the deceased saying that somebody poured kerosene and set fire on her.

21. P.W.4, in the cross-examination, has stated that she does not know what was taken in the house of the deceased, only when the deceased was taken in 108 ambulance, P.W.5, her husband and P.W.1 came to the house of the deceased. Further, she has stated that two days prior to the occurrence, there was a quarrel between the deceased and P.W.2, her husband. However, P.W.5, in the cross-examination stated that after the occurrence, he saw the deceased and she informed him that only the accused poured kerosene and set fire on her.

22. The materials available on record would show that immediately after the occurrence, the deceased was taken to Government Rajaji Hospital, Madurai, at about 4.55 p.m., and P.W.9, the Doctor, admitted her in the hospital and issued an Accident Register - Ex.P4, which shows that though the deceased had sustained 100% burn injury, she was conscious, oriented and she was set fire by her own sister. However, in the cross-examination, P.W.9 has stated that the deceased did not say anything about the injuries sustained by her and he does not know who has informed him that she was set fire by her own sister. Therefore, from the evidence of P.W.9, it could be seen that the deceased did not tell P.W.9 anything about the occurrence.

23. P.W.14, another Doctor, who treated the deceased, has clearly stated that at the time of admission in the burn injury ward, the deceased has stated that she does not know how she has sustained burn injury. These two official witnesses contradicted the evidence of P.Ws.3, 4 and 5. Even though, P.W.2, husband and P.W.6, mother-in-law have stated that the deceased told them that the accused only poured kerosene and set fire on her, however, from their evidence, it could be seen that P.W.2 reached the hospital at about 9.00 p.m. and P.W.6 went to the hospital on the next day at about 2.00 p.m. By that time, the deceased was unconscious and she was not in a position to give any statement, as per the F.I.R, Ex.P11. Hence, their evidence cannot be believed. Though a plastic bottle and a burnt saree, M.Os.1 and 3 were said to be seized from the scene of occurrence, they were not sent for chemical analysis



there is a doubt regarding the registration of the F.I.R. as the Head Constable, who registered the FIR, was not examined by the prosecution. Perusal of the F.I.R. would go to show that after receipt of the intimation from the Government Rajaji Hospital, Madurai, he went to the hospital at about 8.45 p.m., where he found the deceased in an unconscious state. Since nobody was available near the deceased, he was waiting for the arrival of P.W.1, thereafter, recorded the statement of P.W.1 at 1.30 a.m. Then, at about 03.00 a.m. he registered the F.I.R. However, P.W.1, in his cross-examination, has stated that the statement was obtained from him only at 10.00 a.m., on 21.03.2011 which creates a doubt about the complaint given by P.W.1 and the registration of the F.I.R.

24. That apart, from the evidence of prosecution witnesses, it could be seen that the accused also accompanied the deceased in the ambulance and she was present in the hospital, at the time of treatment. Viewing it from the natural conduct, had the accused committed the crime, she ought not to have accompanied the deceased and also being with her in the hospital.

25. The learned Additional Public Prosecutor would vehemently contend that admittedly, both the deceased and the accused were living together at the time of occurrence and the accused was in the house. Hence, under Section 106 of the Indian Evidence Act, the burden is on her to explain that how the occurrence had taken place. Absolutely, there is no explanation from the accused regarding the cause and, therefore, it should be presumed that the accused only committed the crime. The said contention cannot be accepted, for the simple reason that, Section 106 of the Indian Evidence Act, cannot be applied directly and if only the prosecution has discharged its initial burden of establishing the genesis of the crime and made out a *prima facie* case against the accused, the burden would shift on the accused. That apart, from a perusal of the records, it could be seen that absolutely there is no material to show that at the time of occurrence, the accused was along with the deceased at home. The prosecution has not discharged its initial burden in making out a *prima facie* case against the accused and therefore, burden not shifted on the accused to offer any explanation.

26. Considering all these circumstances, we are of the considered view that it is unsafe to believe the doubtful oral dying declaration of the deceased to convict the accused, in the absence of any other corroborating materials and the accused is entitled for acquittal.

27. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant, by the learned Sessions Judge, Mahalir Neethimandram, Madurai (FAC), in S.C.No.315 of 2011, dated 29.11.2018, are set aside. The appellant is acquitted from the charge levelled against her. Fine amount, if any, paid by



the appellant/sole accused shall be refunded to her. Bail bond, if any, executed by her also shall stand cancelled.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

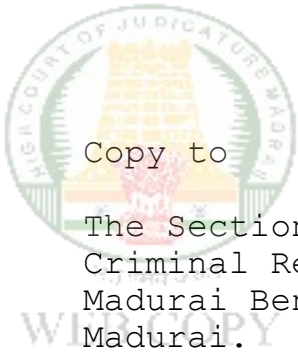
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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Principal district Judge, Madurai.
- 2.The Sessions Court,
Mahalir Neethimandram,
Madurai
- 3.The Chief Judicial Magistrate, Madurai.
- 4.The Judicial Magistrate No. VI, Madurai.
5. the Commissioner of Police, Madurai.
6. The District Collector, Madurai.
- 7.The Inspector of Police,
Thirunagar Police Station,
Madurai District.
- 8.The Director General of Police, Mylopre, Chennai.
- 9.The Officer Incharge, Special Prison for Women,
Madurai.
- 10.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

The Section Officer, (2C)
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

CrI.A.(MD) .No.7 of 2019
26.10.2021

PK(CO)
KB(24.11.2021) 8P 13C