



Bail Slip

The Appellant/Sole Accused Selvarani W/o.Duraipandi was directed to be released on bail vide order of this court dated 25/02/2016 and made in CRL MP(MD) No. 1743 of 2016 in CRL A(MD) No.62 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED : 02.07.2021

JUDGMENT PRONOUNCED : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A.(MD) No. 62 of 2016

Selvarani
W/o. Duraipandi : Appellant/Sole Accused

-vs-

State represented by
the Inspector of Police,
Peraiyur Police Station,
Madurai District.
Crime No.102 of 2014 : Respondent/Complainant

PRAYER:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to allow the appeal and set aside the Judgment made in S.C.No.188 of 2015 on the file of the learned First Additional Sessions Judge, Madurai, dated 28.01.2016.

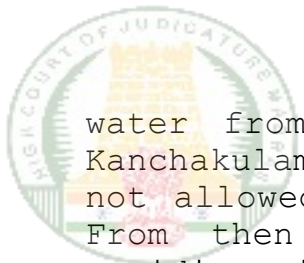
For Appellant : Mr.T.Vadivelan
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed against the Judgment of conviction made in S.C.No.188 of 2015, dated 28.01.2016 on the file of the learned First Additional Sessions and District Judge, Madurai.

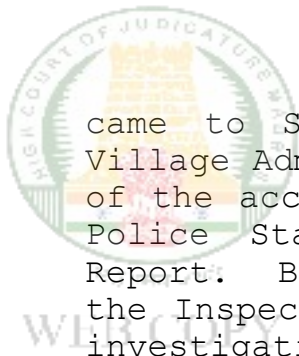
2. The brief facts, which are relevant for consideration in this appeal as per the prosecution case, are as follows:

2.1 The accused herein Selvarani is alleged to have caused the death of her husband by attacking him with wooden log on the date of occurrence on 01.06.2014. She was married to Duraipandi for about 14 years prior to his death and had been living with him at Pazhaiyur East Street. They had three children viz., Mahalakshmi aged 12 years, Azhagarsamy aged 6 years and Selvakumari aged 4 years. She was pregnant by 8 months and had left to her mother's house at Pazhaiyur. When she was residing at Kanchakulam, her husband had murdered his own paternal uncle in a dispute over taking



water from the public tap. Therefore, the entire villagers in Kanchakulam forced them to move out of their village and they were not allowed to reside in her husband's original place Kanchakulam. From then onwards, Selvarani and her husband Duraipandi were residing with their children in her parental village i.e., Pazhaiyur Village. Both the husband and wife eked out their livelihood by working on daily wages. The husband of the accused was addicted to Alcoholic drinks and used to pick up quarrel with the villagers often. As per her complaint, her husband used to go to wine shop and seek wine, if they refused, he will cut his hand and throat with blade and cause self inflicted injury which antagonized the wine shop employees. Scared of his conduct, the wine shop employees used to provide him intoxicant drinks. On 01.06.2014, the village President of Pazhaiyur had conducted Ear Piercing Ceremony for his grand children. The husband of the accused had attended the function. He came home fully drunk and had two bottles of wine with him. He came to the house by around 3.00 p.m., in the afternoon. When the accused offered food, he refused to take the food, instead, he had poured kerosene over her and attempted to set her on fire. Therefore, she had taken the help of one Bheeman, S/o. Arumugathevar and came to Police Station and lodged a complaint. After giving the complaint, she left her parental house along with her children. In the morning, she returned to her house at Pazhaiyur by 07.00 am., by then she saw her husband lying dead on the corner of the house. Therefore, she requested the Police to investigate the cause of death of her husband. The complaint given by the Accused is under Ex.P-9. Based on the complaint of the accused, P.W-12-Sangaiah, Sub Inspector of Police on duty at Saptur Police Station had registered the case under Section 174 of Cr.P.C., in Cr.No.102 of 2014. He had sent the complaint and the FIR to the Tahsildar, Pazhaiyur and the copies of the FIR were sent to the higher Officials including the Circle Inspector of Police, Pazhaiyur.

2.2. Subsequently on 02.06.2014, the accused herself surrendered before the Village Administrative Officer along with a relative Bheeman and gave a confession statement that on 01.06.2014 her husband had attended the Ear Piercing Ceremony of the grandson of Pazhaiyur Village President-Veerapathran. He returned home by 3.00 p.m., fully drunk, with two bottles of wine also with him. On his return, the accused served him lunch but he refused to take lunch and forced to have sex with her. As she refused, he poured kerosene over her. Sensing danger to her life, she thwarted his attempt and ran away. Still second time, he poured kerosene over her and attempted to set fire on her with matchstick. This time, she kicked him and hit him with wooden log. He having been drunk and on the attack of the accused, he lost his balance and fell down and got injured. She did not go to help him. She left her house to her parental house with the children, sensing danger to her life. The next day, she went to her house along with her relative one Bheeman, S/o. Arumugam. On reaching her home, she found her husband lying dead on the North East corner of the house. Therefore, she



came to Saptur Police Station and preferred a complaint. The Village Administrative Officer had recorded the confession statement of the accused and took her along with his Assistant to the Saptur Police Station along with the Village Administrative Officer's Report. Based on the report of the Village Administrative Officer, the Inspector of Police, Peraiyur Police Station had conducted the investigation and altered the FIR in Cr.No.102 of 2014 from the offence under Section 174 of Cr.P.C., (Suspicious death) into the offence of murder under Section 302 along with Section 203 of IPC (Screening of evidence).

2.3.P.W.6-Pandiyaraj-Village Administrative Officer of Athipatti along with his Assistant-Perumal had surrendered the accused before the Circle Inspector of Police, Saptur Police Station. P.W-13-Padamuthu-Inspector of Police, based on the special report of the Village Administrative Officer, recorded the confession statement of accused. Based on the confession statement recorded in the presence of Village Administrative Officer and his Assistant, he had prepared alteration report altering the Section of law into Sections 302 and 203 of IPC. He had arrested the accused and then only recorded the confession statement. Based on the confession statement, he had seized blood stained wooden log from the residence of the Accused and the deceased. In the presence of Village Administrative Officer and his Assistant, he prepared Observation Mahazar under Ex.P-11 and Rough Sketch under Ex.P-12 and he had examined the witnesses viz., Muthu, Azhagu Muthu, Kamalavathi, Accused, Arunachala Achari, Bheeman, Veerapathran, Pandiyaraj, Perumal and Special Sub Inspector of Police. He had sent the body of the deceased to the Government Hospital for conducting Autopsy along with requisition for the same. He had forwarded the Accused to the Court of the learned Judicial Magistrate, Peraiyur with police escorts party and with remand request. Subsequently, P.W-14-Inspector of Police, Peraiyur, who was on leave, had taken charge and the Case Diary file was handed over to him. P.W-14 took up further investigation. On obtaining the Postmortem Report, he had completed the investigation and laid final report. The Special Sub Inspector of Police had earlier visited the scene of occurrence i.e., the residence of the accused and the deceased and conducted inquest where the Panchayatdars were of the unanimous opinion that the death of the husband of the accused was suspicious death. P.W-12 had sent the body after inquest to the Government Hospital, Usilampati with the Head Constable with a request for conducting autopsy on the body of the deceased to the Duty Medical Officer. P.W-11-Dr.Thenmozhi had performed autopsy on the body of the deceased and issued Postmortem Certificate under Ex.P-7 and the final opinion of the Postmortem under Ex.P-8. She sent the viscera to the Forensic Laboratory to find out any poisonous substance in the internal organs of the deceased and on the analysis of the viscera the Forensic Expert issued Viscera Report under Ex.P-16. The final opinion regarding



the death was given by Dr.Thenmozhi under Ex.P-8. P.W-14-Shanmugam had examined the Doctor who conducted Postmortem on the body of the deceased and received Postmortem Certificate and laid final report under Section 173 of Cr.P.C., before the Court of learned Judicial Magistrate, Peraiyur. The learned Judicial Magistrate had taken cognizance of the offence under Sections 302 and 203 of IPC and numbered the case as P.R.C.No.2 of 2015.

2.4.The learned Judicial Magistrate, Peraiyur, had sent summons to the accused. On appearance of the accused, copies were furnished to the accused under Section 207 of Cr.P.C., and accused was examined under Section 313 of Cr.P.C. Since the offence is triable by the Court of Sessions, the learned Judicial Magistrate, Peraiyur had committed the case records in P.R.C.No.2 of 2015 to the Court of the learned Principal Sessions Judge, Madurai and bind over the accused to appear before the learned Principal Sessions Judge, Madurai.

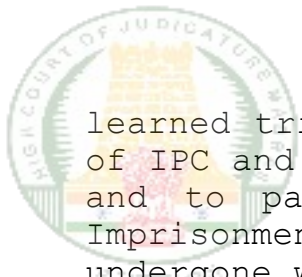
2.5.On receipt of the case records of P.R.C.No.2 of 2015, the learned Principal Sessions Judge, Madurai had taken cognizance of the case and on appearance of the accused and numbered the case as S.C.No.188 of 2015, the learned Principal Sessions Judge, Madurai made over the case to the Courts of First Additional District and Sessions Judge, Madurai and the accused was bound over to appear before the learned First Additional District and Sessions Judge, Madurai.

2.6.On appearance of the accused, the learned First Additional District and Sessions Judge after hearing the arguments of the prosecution and defence, had framed charges under Sections 302 and 203 of I.P.C. The accused pleaded not guilty to the charges and claimed to be tried. Therefore, the trial was ordered.

2.7.During trial, the prosecution had examined P.W-1 to P.W-14 and marked documents Ex.P-1 to Ex.P-16 and M.O-1.

2.8.After closing of the prosecution evidence, the incriminating evidence available from the deposition of P.W-1 to P.W-14 were put to the accused under Section 313 of Cr.P.C. The accused denied the incriminating evidence against her.

2.9.After proceeding under Section 313 Cr.P.C., after hearing the arguments of the prosecution and the arguments of the defence counsel and on appreciation of evidence, the learned First Additional District and Sessions Judge had arrived at a conclusion that the charges framed against the accused under Section 302 of IPC is not attracted and the accused was convicted with the lesser offence of Section 304 (II) of IPC and sentenced her to undergo Rigorous Imprisonment for One year and to pay a fine of Rs.500/-, in default, to undergo three months of Simple Imprisonment. The



learned trial Judge had convicted for the offence under Section 203 of IPC and sentenced her to undergo Simple Imprisonment for 6 months and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for one month. The period of detention already undergone was set off under Section 428 of Cr.P.C.

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3. Aggrieved by the judgment of conviction and sentence of imprisonment imposed by the learned First Additional District and Sessions Judge, Madurai, the accused had preferred this appeal before this Court.

4. The learned counsel for the appellant/accused submitted that the learned trial Judge had not properly appreciated the facts of the case. The accused is the wife of the deceased. As per her own complaint under Ex.P-9 and later her confession statement to the Village Administrative Officer under Ex.P-2, she had clearly stated that her husband was arrayed as an accused in the murder of his own paternal uncle in a wordy quarrel between him and his paternal uncle on taking water from a public tank. Therefore, they were not allowed to reside in the village of his origin. From then onwards they were residing in the village of the accused i.e., Peraiyur. On the date of occurrence on 01.06.2014, he attended ear piercing ceremony of Panchayat President's grandson and returned home in a drunken mood by 3.00 p.m., the accused as wife had served food but the husband of the accused was not willing to take food. Instead, he had attempted to have intercourse with her which she refused. Enraged by that, he poured kerosene on her and attempted to set fire on her. Therefore, she kicked him and went out. Even though, he fell down, he rose and again poured kerosene and attempted to set fire using matchstick. Therefore, enraged by the said act, she attacked her husband with wooden log (tpwF fl;il). Having consumed alcohol, he lost his balance and fell down and got injured. The deceased had not died due to the injury caused by the Accused. He fell to the ground losing his balance for which the wife cannot be held liable. From a perusal of the complaint under Ex.P-9 and confession statement under Ex.P-2, it is manifest that the deceased has a bad antecedence of having killed his own uncle. Therefore, the right of the valid self-defence available to a woman against the attack from her husband who is ready even to take her life away for her not obliging his carnal pleasure, cannot be wished away. Therefore, the threat was real. The deceased was addicted to alcohol. That is why the wine shop employees was scared of him as he had attempted to cut his neck and hands as protest for refusing to provide wine to him. In such circumstances, the attempt of the deceased to kill the accused herein, who is his wife, had been real. Therefore, natural reflex action of woman, who is distressed to attack the aggressor by way of right of self-defence, had been ignored and mechanically convicted the accused herein is found unreasonable and unacceptable. Therefore, the judgment of the learned First Additional District and Sessions Judge, Madurai is perverse and is to be set aside.



5.The learned Government Advocate (Crl. Side) by way of reply submitted that the Court had analysed and assessed the evidence properly and had arrived at a just conclusion. The reasoning of the learned First Additional District and Sessions Judge is available in paragraph Nos.23 to 34. When the learned Sessions Judge had appreciated the evidence as per the Indian Evidence Act and arrived at a just conclusion, the Appellate Court on the same set of evidence cannot disturb its findings, on the decision arrived at by the learned trial Judge. This is because the learned trial Judge had the advantage of observing the demeanour of the witnesses whereas the Appellate Court does not have the benefit of appreciating the demeanour of the witnesses. Therefore, findings of the Trial Court had to be given due weightage. This appeal lacks merits and is to be dismissed.

6.Point for consideration:

Whether the judgment of conviction recorded by the learned First Additional District and Sessions Judge, Madurai in S.C.No.188 of 2015 dated 28.01.2016 is perverse warranting interference by this Court as appellate Court?

7.On perusal of the entire materials available on record and the evidence through the deposition of P.W-1 to P.W-14 and Ex.P-1 to Ex.P-16, it is found that P.W-11-Dr.Thenmozhi had given opinion that the death of the deceased was caused by the injury suffered by him particularly due to head injury.

8.The confession statement under Ex.P-2 clearly narrated the fact that the deceased attempted to pour kerosene on the accused and set fire on her for refusing to have sexual intercourse with him on the afternoon of the fateful day. Therefore, as a right of self-defence, she had caused attack on the deceased and he subsequently died. In the light of the circumstances that a woman who had born children with the deceased and was eking out livelihood with great difficulties, the deceased who seeks intoxicant drink and for refusal of the wine shop employees to provide him drinks, he will cause injuries on his neck and hands. Using this ploy, the deceased got wine from the wine shop. On the fateful day, he had attended the Ear Piercing Ceremony of Panchayat President's grandson and in that intoxicant mood, he wanted to have sex with his wife/Accused who refused it. On her refusal, the deceased poured kerosene over the Accused and attempted to set fire to Accused. Therefore, the Accused had caused attack on deceased with wooden log. Since he was already under the influence of alcohol, he lost his balance and fell down. Since he was intoxicated, the Accused/wife did not care about him and she went to her mother's place. That cannot be treated as a murder. She had on her reflex nature as a woman protected herself from the aggressive husband who was intoxicated and does not have



control over himself after intoxication, who is already facing criminal charges for the murder of his own paternal uncle. Therefore, the above conduct of the deceased had invited the death at the hands of the Accused/wife. On assessment of evidence and in the light of the normal human conduct, the conduct of the accused herein, the wife of the deceased in thwarting the attempt to save herself from the aggressive attempt by the deceased to set fire on her, is justified. She was not at home from the moment she attacked the deceased. Only the next day, she came to know her husband died. Therefore, she cannot be blamed for the act done by her in protecting her body and soul from her aggressive, avaracious husband. Therefore, the Accused/wife is to be set free instead of being punished for her act in protecting her body and soul from the aggressive behaviour of her husband, the deceased. The deceased was not a normal person by his own character.

9.In the light of the above discussion, the point for consideration is answered in favour of the Appellant/Accused and against the Prosecution/Respondent. The judgment of conviction recorded by the learned First Additional District and Sessions Judge, Madurai in S.C.No.188 of 2015 dated 28.01.2016 is perverse warranting interference by this Court.

In the result, this Criminal Appeal is allowed.

The finding of guilt recorded by the learned First Additional District and Sessions Judge, Madurai in S.C.No.188 of 2015, the conviction and sentence imposed under Sections 304 (II) and 203 of IPC are set aside. The bail bond executed by the Appellant/Accused, if any, shall stand discharged. Fine amount paid, if any, shall be refunded to the Appellant.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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To

1.The First Additional District and Sessions Judge,
Madurai.

2.The Principal District and Sessions Judge,
Madurai.

3.The District Munsif Cum Judicial Magistrate,
Peraiyur.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Chief Judicial Magistrate,
Madurai.

5.The Judicial Magistrate,
Peraiyur.

6.The Inspector of Police,
Peraiyur Police Station,
Madurai District.

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

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

Crl.A.(MD) No.62 of 2016

29.10.2021

MGJ(04.01.2022) 8P 10C