



Bail Slip

Appellant namely Vadivelu was released on bail vide order of this Court in CRL.MP(MD)No.4443 of 2018 in Crl.A (MD)No.277 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2021

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)No.277 of 2018

Vadivelu

.. Appellant/Sole Accused

-vs-

State rep. by
The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.
Crime No.122 of 2013.

.. Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the Fast Track Mahila Court, Ramanathapuram, in S.C.No.29 of 2014, dated 29.05.2018.

For Appellant

:: **(*)Mr.C.D.Johnson**
for M/s.PR.Boomee Rajan

For Respondent

:: Mr.S.Ravi
Standing Counsel for State

JUDGMENT

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

The appellant is the sole accused in S.C.No.29 of 2014, on the file of the Fast Track Mahila Court, Ramanathapuram, who stood charged and convicted for the offence under Section 302 I.P.C. and sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,00,000/-, in default, to undergo one year Rigorous Imprisonment and out of Rs.1,00,000/- Rs.49,500/- each was directed to be paid to the children of the deceased and the remaining amount of Rs.1,000/- was directed to be paid as fine to the Government.

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Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2.The case of the prosecution in brief as follows:

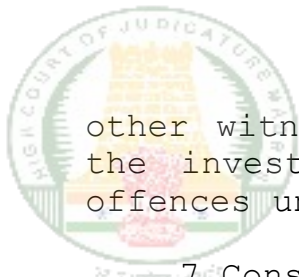
The deceased Kavitha is the daughter of P.Ws.1 and 2 and wife of P.W.3 and sister of P.W.17. There was a civil dispute between the deceased family and accused family. On 09.09.2013, at about 9.00 p.m., the accused and his family members were trying to set fire to the deceased house and the accused also poured kerosene and set fire on the deceased. Immediately, she was taken to the Government Hospital, Ramanathapuram and after giving first aid, she was shifted to Government Hospital, Karaikudi. Subsequently, she was shifted to Government Rajaji Hospital, Madurai, on 11.09.2009 and was given treatment. On 12.09.2009, at 11.00 p.m., the deceased succumbed to the injuries.

3.P.W.15, Sub-Inspector of Police of the respondent Police Station, recorded the statement of the deceased at about 8.00 p.m. on 10.09.2013, at Karaikudi Government Hospital. Based on the same, he registered a case in Crime No.122 of 2013, under Section 307 I.P.C. and sent the original F.I.R. (Ex.P.13) to the Judicial Magistrate, Thiruvadanai and copies to the higher officials and also sent a copy to P.W.21, Inspector of Police, for investigation.

4.P.W.21, Inspector of Police, on receipt of the F.I.R. commenced the investigation and on 11.09.2013, at about 6.00 p.m., he visited scene of occurrence and prepared Observation Mahazar (Ex.P.17) and Rough Sketch (Ex.P.16) in the presence of witnesses. Then, he examined the witnesses and recorded their statements. After the deceased succumbed to the injuries, he altered the offence to 302 I.P.C. and sent the alteration report (Ex.P.18) to the Judicial Magistrate Court. On 13.09.2013, at about 8.00 a.m., he conducted inquest on the dead body in the presence of panchayatars. Thereafter, he sent the body for postmortem through P.W.14, Head Constable.

5.P.W.19, Doctor, working as Assistant Professor in the Government Medical College, Madurai, conducted autopsy on the dead body on 13.09.2013 at 11.00 p.m. and given the postmortem report (Ex.P.15) and he was of the opinion, the deceased would appear to have died of extensive superficial burns of about 90% and its complications thereof.

6.Thereafter, P.W.21, arrested the accused on 15.09.2013, at about 6.00 a.m. and he voluntarily came forward to give his confession, based on the admissible portion of the confessional statement, P.W.21 recovered M.O.1 - 5 litre kerosene can and M.O.2 - match box with match sticks and sent the material objects to Judicial Magistrate Court under Form 95 and remanded the accused to judicial custody. Thereafter, he examined the postmortem doctor and



other witnesses and recorded their statements and after completing the investigation, filed the final report on 27.12.2013 for the offences under Section 302 I.P.C.

7.Considering the above materials, the trial Court framed charge as stated above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 21 witnesses, marked 24 documents and also produced 2 material objects.

8.Out of the witnesses examined, P.W.1 is the mother of the deceased. According to her, there was a civil dispute between the deceased family and the accused family and on the date of occurrence i.e., on 09.09.2013, at about 9.00 p.m., there was a quarrel between them and the accused poured kerosene on the deceased and set fire and she has taken the deceased to the Hospital. P.W.2, father of the deceased, also spoke of the civil dispute and the quarrel between the parties. According to him, during the quarrel, the deceased came out of the house burning and fall in the nearby field. Then, they took her to hospital. P.W.3 is the husband of the deceased. According to him, he was living in his father-in-law's house along with his wife, earlier there was a quarrel, in which, the women-folks abused the deceased and due to the same, the deceased attempted to commit suicide and it was prevented; once again at about 9.00 p.m., there was a quarrel and the accused family members attacked him and the accused poured kerosene on the deceased and set fire on her and the deceased ran out of the house and fell in the nearby field.

9.P.W.4, Judicial Magistrate No.1, Fast Track Court, Madurai, recorded the dying declaration of the deceased at the Government Hospital, Madurai. P.W.5, Doctor, working in the Government Hospital, Ramanathapuram, where he received the deceased on 10.09.2013, at 12.40 a.m. and given first aid and sent her to Government Hospital, Karaikudi and he has issued Ex.P.3, Accident Register copy, wherein the deceased said to have stated that some unknown person set fire on her. P.W.6, the Deputy Director of Forensic Department, examined the material object M.O.1, plastic can and gave report Ex.P.4.

10.P.W.7., Doctor, working in Karaikudi Government Hospital, admitted the deceased and issued Ex.P.5, Accident Register copy, wherein, he has found the deceased sustained 90% injury. P.W.8 is the maternal uncle of the deceased and he spoke about the civil dispute between the parties. According to him, during the quarrel between the accused family and deceased family, the accused family was trying to set fire to the house of the deceased and at about 9.00 p.m., the deceased came out of the house with fire and when enquired, he was told that the accused set fire on her. P.W.9, sister of the deceased, is only a hearsay witness. P.Ws.10 and 11, Mahazar witnesses, turned hostile. P.W.12 - Village Administrative



Officer and P.W.13 - Village Assistant are witnesses to confession statement and recovery of material objects and they have also turned hostile. P.W.14, Head Constable, handed over the body of the deceased to Government Rajaji Hospital, Madurai for postmortem.

11.P.W.15., Sub-Inspector of Police, recorded the statement of the deceased at the Government Hospital, Karaikudi and registered the F.I.R. P.W.16, Doctor, working at Government Rajaji Hospital, Madurai and he admitted the deceased and issued the Accident Register copy (Ex.P.14), wherein it is stated that the deceased has already given dying declaration at Government Hospital, Ramanathapuram. P.W.17 is the brother of the deceased and he spoke about the quarrel and according to him, during the quarrel, he saw the deceased burning and he immediately took her to hospital. P.W.18, Head Constable, handed over the material objects for examination at forensic laboratory.

12.P.W.19, Assistant Professor, who conducted autopsy and issued postmortem certificate (Ex.P.15) , which reads as follows:

"The following ante mortem injuries are noted on the body:

Extensive superficial infected burns involving the following areas:

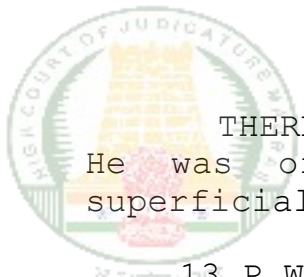
Whole of face, front of scalp, whole of neck, chest and abdomen. Both upper limbs and lower limbs in patchy manner. The base of the burnt area is reddish in colour and infected areas are covered with foul smelling pus material in patches. Peeling and blackening of the skin noted on all over the burnt areas in patchy manner. Partial degloving of the skin noted on both hands and feet. Evidence of singeing of hairs noted on front of scalp, eyebrows, eyelashes, ampits and public region. IV drip wound noted on inner aspect of left ankle.

OTHER FINDINGS:

Peritoneal cavity - empty; Pleural cavities - empty; Pericardium - contains 15 ml of straw colour fluid; Heart - right side fluid blood, left side empty; Coronaries - patent; Lungs - cut section congested and showing bilateral basal consolidation in patches; Larynx & trachea - normal, cut section contains fine froth; Hyoid bone - intact; Stomach - contains 100ml of brown colour fluid, nil specific smell, mucosa - normal; Liver, Spleen & kidneys - cut section congested; Small intestine - contains 20ml of bile stained fluid nil specific smell, mucosa - normal; Bladder - empty; Uterus - normal, cut section empty; Brain - Surface vessels & cut section congested.

OPINION:

"THE DECEASED WOULD APPEAR TO HAVE DIED OF EXTENSIVE SUPERFICIAL BURNS OF ABOUT 90% AND ITS COMPLICATIONS



THERE OFF"

He was of the opinion that the deceased died of extensive superficial burns of about 90% and its complications.

13.P.W.20, is the doctor working in Government Hospital, Madurai and he was present when the Judicial Magistrate was recording the dying declaration and he has examined her and given a certification that she is conscious and fit to give dying declaration. P.W.21, Inspector of Police, conducted the investigation, recorded the statements of witnesses and after completion of investigation filed final report on 27.12.2013 for the offence under Section 302 I.P.C.

14.The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false and he has examined one Sonaimuthu as D.W.1. According to him, he is a relative of both the accused and deceased and he has also spoken about the quarrel between the accused family and deceased family due to civil dispute and further stated that at about 4.00 p.m. the deceased has attempted to commit suicide and that was prevented by others and at about 8.00 p.m., once again she poured kerosene and set fire on her and all the persons present there put off the fire and sent her to Hospital through ambulance.

15.Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as state above. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

16. (*)**Mr.C.D.Johnson**, learned counsel appearing for Mr.PR.Boomee Rajan, learned counsel for the appellant, would submit that all the eyewitnesses, namely, P.Ws.1 to 3 and 17 are parents, husband and brother of the deceased respectively. From their evidence, there are lot of material contradictions. That apart, the dying declarations given by the deceased are contradictory to each other. In the first three dying declarations, deceased not implicated the accused, but only the final dying declaration, given two days after the occurrence, has falsely implicated the accused due to the counseling of the relatives, and the trial Court believing the same convicted the appellant. The learned counsel further submitted that according to P.W.1, the accused went inside the house and set fire, whereas P.W.3 stated that the occurrence has taken place outside the house, wherein the deceased was trying to pour kerosene, despite they prevented them, they poured kerosene. It is a material contradiction, which clearly shows that their evidence are un-believable. Apart from that, all the neighboring independent witnesses turned hostile. The trial Court without considering the contradictions in the evidence of eye-witnesses, P.Ws.1 to 3 and also relying on the dying declaration has convicted the accused. Hence, the conviction is liable to be set aside.



17.Mr.S.Ravi, learned Standing Counsel for State would submit that the occurrence has taken place in the house of the deceased, P.Ws.1 and 2 - parents, P.W.3. - husband and P.W.17 - brother of the deceased were present at the time of occurrence. There was a quarrel between the parties, during the quarrel, the accused poured kerosene on the deceased and set on fire. Their evidence is consistent in this aspect. That apart, the deceased has given judicial dying declaration, wherein she has clearly stated that only this accused set on fire. Considering the evidence of eyewitnesses and dying declaration as trustworthy and reliable, the trial Court has convicted the accused and there is no reason to interfere with the judgment.

18.We have considered the rival submissions and perused the materials carefully.

19.The accused and deceased are closely related to each other and there was a civil dispute between the parties regarding their share in a landed property. From the available evidence, it could be seen that, there was a quarrel between the parties on 09.09.2013, right from the morning and a mediation was also conducted. Once again, at 9.00 p.m., there was a quarrel, at that time, the occurrence is said to have taken place. It could also be seen from the evidence available on record, on the very same day at about 3.00 p.m., the deceased tried to self-immolate herself by pouring kerosene on her and that was prevented by the family members and others present there. Thereafter, at about 9.00 p.m., the present occurrence has taken place. P.Ws.1 to 3 and 17 are eye-witnesses to the occurrence. P.W.1 - mother, P.W.2 - father, P.W.3 - husband and P.W.4 brother of the deceased, the other independent witnesses examined by the prosecution have turned hostile. According to P.W.1, mother of deceased, during quarrel, the family members of the accused attacked P.W.3 and the womenfolks have abused the deceased. At that time, the accused entered into the house of the deceased and set fire on her and the deceased came out and fall in the nearby field. P.W.2, father of the deceased, also spoke about the quarrel and at the time he saw the deceased came out of the house with fire on the body and according to him, it is only the accused set fire on her. P.W.3, husband, has given a different version. According to him, during quarrel, the accused has asked his family members to set fire to their house, when the deceased questioned the accused, the accused poured kerosene and set fire on her and the deceased fall down in the nearby field. P.W.17, brother of the deceased has given another different version stating that the accused's mother and sister abused the deceased and tried to attack her and some other family members of the accused attacked P.W.1, while they were quarrelling, the accused said to have poured kerosene on the deceased and set fire on her, and there are material contradictions in their testimonies.

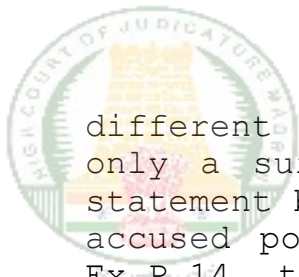


20. Turning to the dying declaration, there are multiple dying declarations given by the deceased. The occurrence has taken place at 9.00 p.m. Immediately, the deceased was taken to Government Hospital, Ramanad. She was treated by P.W.5 at about 12.40 a.m. and issued Accident Register (Ex.P.3). On a perusal of Ex.P.3, it could be seen that the deceased has stated that, the occurrence has taken place on 09.09.2013, at about 11.45 p.m. in her house, committed by one unknown person. It is the earliest statement given by the deceased. P.W.5, Doctor, also corroborated the same. Thereafter, she was shifted to Government Hospital, Karaikudi, on 10.09.2013, at about 4.30 p.m., wherein P.W.7, Doctor, admitted the deceased and issued an Accident Register copy (Ex.P.5), wherein it is stated that the deceased is alleged to have sustained suicidal burn injuries at her home on 09.09.2013. While she was given treatment at Government Hospital, Karaikudi, P.W.15, Sub-Inspector of Police, recorded the statement of the deceased (Ex.P.6), based on that he registered the F.I.R., wherein she has stated that there was a quarrel between the accused family and deceased family, at that time they have attacked the deceased's husband due to the same, she attempted to commit suicide and the family members saved her. Once again, the accused family entered into the house and quarreled with them, at that time, the accused asked the family members to set fire to her house and poured kerosene on her and set fire. Thereafter, she was shifted to Government Hospital, Madurai, on 11.09.2013 at about 4.00 p.m., wherein P.W.16, Doctor, treated her and issued Accident Register copy (Ex.P.14), wherein he has stated that a dying declaration has been obtained at Government Hospital, Ramanad, but that dying declaration was not placed before the Court. While she was taking treatment at Government Hospital, Madurai, a judicial dying declaration was recorded by P.W.4, Judicial Magistrate No.1, Fast Track Court, Madurai under Ex.P.1, where she has stated that there was a quarrel between the accused family and deceased family and at that time she poured kerosene on her and attempted to commit suicide. Thereafter, at about 10.00 a.m. again there was a quarrel, once again she poured kerosene on her and the accused set on fire. The relevant portion of the dying declaration reads as follows:

“-அப்புறம் என்னம்மா.

- இனிமே என் புருசனையும் அசிங்கமா சொல்லுவாங்கன்னு மண்ணெண்ணய ஊத்திட்டேன். அப்புறம் எல்லோரும் புள்ளை குட்டிக் காரின்னு சொன்னாங்க
- அப்புறம் என்னம்மா நடந்துச்சு.
- நைட்டு பத்து மணிக்கு, சண்ட போட்டாங்க. சண்டையில் மறுபடியும் மண்ணெண்ணய ஊத்திட்டேன். வடிவேலு தான் பொருத்தி விட்டான்
- வடிவேலுங்கறது யாரும்மா.
- எனக்கு சித்தப்பா மகன். அப்பா அம்மா, கணபதி, காளியம்மா.”

21. Considering all these statements of the deceased, we find lot of contradictions. The earliest statement given before P.W.5, Doctor, at Ramanathapuram Hospital, was that, some unknown person set fire on her. Thereafter, on the next day, she has given a

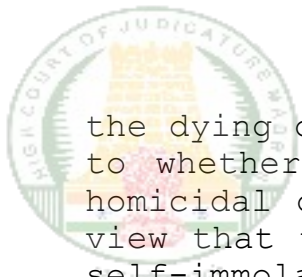


different version at Government Hospital, Karaikudi, that it was only a suicide attempt at her home. Subsequently, she has given statement before the police, wherein she has stated that, it is only accused poured kerosene and set on fire. In the meantime, as per Ex.P.14, there was yet another dying declaration obtained from the deceased at Government Hospital, Ramanathapuram. It is also acknowledged by P.W.16, Doctor, working at Government Rajaji Hospital, but that dying declaration has been suppressed by the prosecution. Once again, a Judicial dying declaration has been given by the deceased, wherein she has stated that earlier she has attempted to commit suicide by pouring kerosene. Thereafter, once again, at about 10.00 p.m. the accused only poured kerosene and set fire on her. Those material contradictions have make us to suspect genuineness of the dying declarations.

22.The law is settled that, if a dying declaration is found to be voluntary, reliable and made in fit state of mental condition, it can be relied for convicting the accused without any corroboration. However, in cases of multiple dying declarations and there are inconsistencies, then the Court has to examine whether the inconsistencies are material or not. On examining the dying declarations, if the Court found inconsistencies are material in nature, then, it is unsafe to convict the accused based on the dying declarations. The Hon'ble Supreme Court in **Amol Singh v. State of M.P. [(2008) 5 SCC 468]**, held as follows:

"8. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. (See: **Kundula Bala Subrahmanyam v. State of A.P. [(1993) 2 SCC 684]**). However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

23.On a careful examination of inconsistency found in the dying declarations, it could be seen that it is material in nature. The material contradictions in the testimonies of eye-witnesses and in



the dying declarations given by the deceased create serious doubt as to whether the deceased has committed self immolation or it is a homicidal death. Considering all those circumstances, we are of the view that there is a possibility that deceased might have committed self-immolation and due to enmity prevailing between the parties, she put the blame on the accused, and it is highly unsafe to convict the accused on the strength of the inconsistent dying declarations and the interested testimonies of eye-witnesses. Hence, we are unable to sustain the conviction and sentence imposed on the accused and the accused is entitled to the benefit of doubt.

24. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused, by the Fast Track Mahila Court, Ramanathapuram, in S.C.No.29 of 2014, by the judgment dated **(*)29.05.2018**, are hereby set aside. The appellant/accused acquitted of the charge levelled against him. Fine amount, if any, paid by the appellant/accused shall be refunded to him. However, if the compensation amount already paid to the children of the deceased, it need not be recovered. Bail bonds executed by him also shall stand cancelled. After the period of Appeal, the material objects shall be destroyed.

Sd/-

Assistant Registrar (CS-II)

(*)Corrected as per order of this Court dated 05/10/2021

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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

(*)To be Substituted to the order already despatched on 27/09/2021

1. The Sessions Judge,
Fast Track Mahila Court,
Ramanathapuram.

2. The Judicial Magistrate,
Thiruvadanai,
Ramanathapuram District.

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



3.The Inspector of Police,
Thondi Police Station,
Ramanathapuram District.

4.The Superintendent, Central Prison, Madurai.

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

Copy to
The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.PR.BOOMEERAJAN, Advocate- SR-27484

Criminal Appeal No.(MD) No.277 of 2018

24.08.2021

_RD(12.10.2021) 10P 9C