



Crl. A.(MD)No.535 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl. A.(MD)No.535 of 2019

Maalaiyammal

: Appellant

Vs.

The State Rep. by
The Inspector of Police
Thalamuthunagar Police Station,
Thoothukudi District.
(Crime No.124 of 2013)

: Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 23.02.2017 in S.C.No. 438 of 2017 on the file of the II Additional District and Sessions Court, Thoothukudi and acquit the appellant.

For Appellant

**: Mr.P.Ganapathi Subramanian
Legal Aid Counsel**

For Respondent

**: Mr.S.Ravi,
Additional Public Prosecutor**



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Crl. A(MD)No.535 of 2019

J U D G M E N T

(Judgment of the Court was delivered by P.N.PRAKASH, J)

This criminal appeal is filed against the judgment and order in S.C.No.438 of 2015 on the file of the II Additional District and Sessions Court, Thoothukudi.

2. The trial Court, by judgment and order dated 23.02.2017, convicted the accused for the offence under Section 302 IPC and sentenced her to undergo life imprisonment and also to pay a fine of Rs. 1,000/-, in default, to undergo simple imprisonment for one year. Challenging the said conviction and sentence, Maalaiyammal (accused) is before this Court.

3. The prosecution story runs thus:

3.1 The deceased Panneer Selvam @ Pandaram was a widower, who had four children - two girls and two boys. He was living with the children in a house near Siluvaipattti water tank in Hussain Nagar, which belonged to Tamilselvi (P.W.6). After the death of his wife, he was in a



Crl. A(MD)No.535 of 2019

live-in relationship with the appellant, who was also residing in the same house.

3.2 One year prior to the occurrence, Deivakani (P.W.1), Panneer Selvam's daughter fell in love with one Maridurai, who belonged to a different community, eloped and got married, which was not to the liking of the Panneer Selvam and the appellant. However, after Deivakani (P.W.1) conceived, it appears that there was a rapprochement with Panneer Selvam, who used to go to her house frequently.

3.3 It is alleged that the appellant objected to Panneer Selvam spending for his children, on account of which, they used to quarrel very frequently.

3.4 On the fateful day, i.e., on 26.05.2013, Deivakani (P.W.1) had come to see her father and siblings. In the evening, a quarrel arose between the appellant and Panneer Selvam and the children intervened and brought out a truce. After dinner, the month of May being a sultry one, the appellant, Panneer Selvam and the three children slept outside their house in the open. Around midnight, the children heard a hue and



Crl. A(MD)No.535 of 2019

cry and when they got up, they found the appellant standing with a fire torch and a kerosene can and their father in flames.

3.5 The neighbours alerted and an ambulance was requisitioned. Muthamizh Selvan (P.W.3), Panneer Selvam's son, took him by the ambulance to the Government Hospital, Thoothukudi, where Panneer Selvam was examined by Dr.Suriya Pratheeba (P.W.15) at 1.30 a.m. on 27.05.2013 and noted that Panneer Selvam had suffered 100% burns in the Accident Register, a copy of which has been marked as Ex.P.-20.

3.6 Panneer Selvam found to be conscious and oriented. It is further recorded in the Accident Register as follows:-

“Attested history of homicidal burns by a known female person on 26.05.2013 around 12.00 midnight”

3.7 Panneer Selvam was immediately admitted as an inpatient and the hospital authorities informed the jurisdictional Magistrate Mr.Shankar (P.W.11), who came to the hospital at 10.30 a.m. on 27.05.2013 and recorded the statement of Panneer Selvam, which has been marked as Ex.P.-16, in the presence of Dr.Kannnan (P.W.12). On the



Crl. A(MD)No.535 of 2019

certification of Dr.Kannan (P.W.12) that Panneer Selvam was in a fit state of mind to give a statement, Mr.Shankar (P.W.11), jurisdictional Magistrate recorded the statement of Panneer Selvam, in which, Panneer Selvam had stated that he had a quarrel with his second wife Maalaiyammal (appellant), in which, she had set him on fire. In the statement, he had also stated that he has given his daughter in marriage; she is pregnant; there was a quarrel with his daughter, on account of which, he was not talking to her, but now, he is visiting his daughter which was questioned by the second wife and so, she set him on fire.

3.8 Intimation was sent to the police and on a written complaint (Ex.P.1), given by Deivakani (P.W.1), Dileepan (P.W.16), Sub-Inspector of Police, registered a case in Thalamuthunagar Police Station Crime No. 124 of 2013 under Section 307 IPC on 27.05.2013 at 14.30 hours and prepared a printed FIR (Ex.P.-21), which reached the jurisdictional Magistrate at 10.45 a.m. on the next day (28.05.2013), as could be seen from the endorsement thereon.

3.9 Investigation of the case was taken over by Kumaresan (P.W. 17), who went to the place of occurrence and prepared an Observation



Crl. A(MD)No.535 of 2019

Mahazar (Ex.P.-22) and Rough Sketch (Ex.P.-23).

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3.9.1 Panneer Selvam @ Pandaram succumbed to the injuries on 28.05.2013 at 06.00 a.m. in the hospital and therefore, the case was altered to one under Section 302 IPC *vide* alteration report (Ex.P.-25).

3.9.2 Inquest over the body of the deceased was conducted and the inquest report was marked as Ex.P.-26. The body was thereafter sent for postmortem.

3.9.3 Dr.Mummoorthi (P.W.-18) performed autopsy on the body of Panneer Selvam and issued postmortem certificate (Ex.P-27), wherein, he has opined as under:-

“Final Opinion:-

The deceased would appear to have died of complications of superficial burns. Death would have occurred 6-12 hrs prior to the autopsy. No poison was detected in the viscera analysed.”



Crl. A(MD)No.535 of 2019

3.9.4 The appellant was arrested by the Investigating Officer on 28.05.2013 at 14.00 hours and based on a police confession, a kerosene can (M.O.3) and a match box (M.O.4) were recovered.

4. After examining the witnesses and collecting the various reports, investigation was completed and a final report was filed in P.R.C.No.29 of 2013 in the Court of the Judicial Magistrate No.II, Thoothukudi, under Section 302 IPC against the appellant.

5. On the 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, Thoothukudi, in SC.No.438 of 2015 and was made over to the II Additional District and Sessions Court, for trial. The trial Court framed a charge under Section 302 IPC against the appellant and when questioned, the appellant pleaded not guilty.

6. To prove the case, the prosecution examined 18 witnesses and marked 28 exhibits and 8 material objects.



Crl. A(MD)No.535 of 2019

7. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against her, she gave a general denial, but also gave a written statement, wherein, she had stated that, two days prior to the incident, she quarreled with her husband and left the house; on coming to know the incident, she came to the village and she was taken to the police station; she did not commit the sinful act.

8. No witness was examined from the side of the appellant nor any document marked.

9. After considering the evidence on record and hearing either side, the trial court, by judgment and order dated 23.02.2017, in S.C.No.438 of 2015, has convicted and sentenced the appellant as under:-

<i>Provision under which convicted</i>	<i>Sentence</i>
Sec. 302 of IPC	Life Imprisonment and also to pay a fine of Rs.1,000/- , in default to undergo one year simple imprisonment

Aggrieved by the same, the present appeal was filed with a delay of 925 days to condone which, a petition in Crl.M.P(MD) No.9683 of 2019 under Section 5 of the Limitation Act, 1963, was filed and the same was



Crl. A(MD)No.535 of 2019

allowed by this Court on 08.11.2019, after which, the appeal was numbered.

10. We find that, since the appellant was indigent, Mr.P.Ganapathi Subramaniyan, learned counsel, was nominated by the High Court Legal Services Committee to defend the case.

11. Heard Mr.P.Ganapathi Subramanian, learned counsel for the appellant and Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State.

12. The prosecution has proved the following facts beyond a cavil:-

12.1 Panneer Selvam was a widower and was living in a house near Siluvaipattti water tank in Hussain Nagar belonging to Tamilselvi (P.W.6);

12.2 Panneer Selvam left behind four children, of whom, Deivakani, Indira Selva Mahesh and Muthamizh Selvan were examined as (P.W.1), (P.W.2) and (P.W.3), respectively;



Crl. A(MD)No.535 of 2019

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12.3 Panneer Selvam suffered burns on the night of 26.05.2013 and he died on 28.05.2013.

13. The short question that emerges for the consideration of this Court is, whether the appellant was the perpetrator of the offence. In this case, there are three important witnesses namely, Deivakani (P.W.1), Indira Selva Mahesh (P.W.2) and Muthamizh Selvan (P.W.3). These witnesses have stated that their father (Panneer Selvam) was in a live-in relationship with the appellant; when Deivakani (P.W.1) eloped with her lover, their father was not happy and so, he was not in talking terms with Deivakani (P.W.1); after Deivakani (P.W.1) became pregnant, he changed his mind and used to visit her frequently; the appellant used to question their father for spending money on them, on account of which, there used to be frequent quarrels between the two; on the night of 26.05.2013, while all of them were sleeping in the open area outside the house, they heard a hue and cry and when they woke up, they were shocked to see the appellant with a fire torch and a kerosene can and her father in flames.



Crl. A(MD)No.535 of 2019

WEB COPY

14. The defense was not able to make any serious headway in the cross-examination of the witnesses and it was suggested to Deivakani (P.W.1) that Panneer Selvam had committed suicide by self-immolation, which she herself denied.

15. Mr.P.Ganapathi Subramanian, learned counsel for the appellant, took us through the cross-examination of Deivakani (P.W.1), wherein, she has stated that while she was in the hospital on 28.05.2013, the police came there and recorded the statement of her father and therefore, the complaint Ex.P.-1 that was given by Deivakani (P.W.1) stood vitiated and at the most, it could be treated only as a police statement under Section 161(3) Cr.P.C.

16. On a demurrer, even if we agree with the aforesaid submission of Mr.P.Ganapathi Subramanian, the fact that Panneer Selvam was examined by Dr.Suriya Pratheeba (P.W.15) at 1.30 a.m. on 27.05.2013, wherein, Panneer Selvam had stated that he was set on fire by a known female, cannot be lightly brushed aside. That apart, even before the police came to the hospital, Mr.Shankar, (P.W.11), jurisdictional



Crl. A(MD)No.535 of 2019

Magistrate, had received intimation from the hospital, had gone to the hospital at 10.30 a.m. on 27.05.2013 and had recorded the statement of Panneer Selvam in the presence of Dr.Kannan (P.W.12). On the death of Panneer Selvam, this statement got elevated to a dying declaration relevant under Section 32 of the Evidence Act. In the dying declaration, Panneer Selvam had clearly stated the circumstances under which the appellant had set fire to him. Therefore, even if we keep aside the complaint (Ex.P.-1), which came into existence much after the dying declaration (Ex.P.-16), we find no good reasons to reject the said dying declaration that was recorded by a Judicial Officer, namely, Mr.Shankar (P.W.11). The evidence of (P.W.1), (P.W.2) and (P.W.3) are in consonance with the dying declaration and there are no contradictions therein.

17. In the light of the above, the false explanation that was given by the appellant when she was examined under Section 313 Cr.P.C., by itself is an incriminating circumstance against her as held by the Supreme Court in *Anthony D'Souza and Ors. v. State of Karnataka [(2003) 1 SCC 259]*.



Crl. A(MD)No.535 of 2019

18. In the result, this appeal is dismissed as being devoid of merits.

However, we place on record our appreciation to Mr.P.Ganapathi Subramanian, learned counsel, nominated by the High Court Legal Services Committee for taking up this case *pro bono* and defending the same in the best possible manner.

[P.N.P., J.] & [R.H., J.]
12.07.2022

Index : Yes/No

Internet : Yes

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To

1. II Additional District and Sessions Court,
Thoothukudi.

2.The Inspector of Police
Thalamuthunagar Police Station,
Thoothukudi.

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



WEB COPY



Crl. A(MD)No.535 of 2019

P.N.PRAKASH, J
AND
R.HEMALATHA, J

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Judgment made in
Crl.A.(MD)No.535 of 2019

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