



Crl.A.(MD)No.246 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.11.2024

Coram:

**THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS. JUSTICE R. POORNIMA**

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Pappathi

.. Appellant

Vs.

1. The Inspector of Police
Vedasandur Police Station,
Dindigul District
Cr No. 411/2012.

2. Manikandan

.. Respondents

Prayer: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to call for the records and to set aside the judgment of acquittal passed by the learned Sessions Judge, Mahila Fast Track Court, Dindigul, made in S.C.No.149 of 2014 dated 25.01.2018 and to convict the accused person.

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For Appellants : Mr.P.Saravanakumar

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R1

Mr.D.Venkatesh for R2

J U D G M E N T

(Judgment of this Court was delivered by R.POORNIMA,J.)

This appeal is preferred against the judgement of acquittal passed by the learned Assistant sessions Judge Fast Track Mahila Court, Dindigul in S.C.No. 149 of 2014 dated 25.01.2018 for the offence under Section 302 IPC.

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

One Palanichamy, son of Bungala Vellayan, Kethampatti Village, lodged a complaint on 03.12.2012 with the following averments:

He is having one son and a daughter by name Jyothi Alias Muniammal, aged about 30 years. 13 years back, she was married to one Nagaraj son of Perumal and she is having a daughter aged about 12 years. His Daughter had conceived.



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3. The complainant and his wife Pappathi were living with his daughter. His daughter was having illicit relationship with one Manikandan, accused. On 3.12.2012 at 4.00p.m the accused had quarrel with his daughter, when nobody was there, he set her ablaze by pouring kerosene on her body. At that time, the complainant entered into the house; the accused fled away after informing him that, her daughter committed self immolation.

4. The complainant tried to save his daughter with the help of Papammall, Perumal, but, she succumbed to her injuries. The said Manikandan left his two wheeler bearing registration number TN-57-AD-2647 in the place of occurrence. Hence, he prayed to take action against the said Manikandan.

5. The complaint has been marked as Ex.P1. Thiru Sajahan, P.W.13 Sub Inspector of Police, after receipt of the complaint registered Ex.P6-F.I.R. in Crime No.411 of 2012 under section 302 IPC, sent the



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same to the Inspector of Police for investigation.

6. Thiru.Nallu, Inspector of Police P.W.15 after receipt of F.I.R., went to the place of occurrence, prepared observation mahazar, rough sketch, Ex.P4 and Ex. P8 in the presence of witnesses Varadaraj and Savadamuthu. He recovered plastic kerosene cane, matchbox, match sticks, broken bangles eight numbers, half sleeved black shirt and Lungi from the place of occurrence in presence of the same witnesses mentioned supra and also recovered two wheeler bearing Registration No.TN-57-AD-2647, semi burnt cotton pack from the place of occurrence which is marked as M.O.1 to M.O.8 in a recovery Mahazar.

7. At 23.00 hours, in the presence of Witnesses and Panchayatars, he had conducted inquest on the dead body and prepared the Inquest Report, Ex.P.11.

8. At 01.00 a.m, he sent a request letter for postmortem through Grade-I PS Shankarammal - 172 and sent the dead body to Government



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Hospital at Vedachandur for post mortem.

9. P.W.14 conducted autopsy on the dead body and issued Ex.P.7 postmortem report and in the postmortem report he mentioned the injuries as follows :

“RM present in all 4 limbs. Entire skin is burnt and no identification are seen. Entire scalp hair is burnt except a bunch of hair in occipital area (partly burnt). Tongue is bitten. Blood is bright red in colour. Nail beds are burnt.

Internal findings : All organs are congested and brightened in colour. Larynx and trachea contains soot particles entire larynx and trachea is congested. Lungs are congested and oedematous. Heart chambers full. Uterus contained a dead female fetus of approximately 32 weeks of IUL with adequate amniotic fluid and placenta. Stomach contained 100 ml nuroid fluid. Digestive juices. No food found. All internal organs are congested.

The deceased would appear to have died of shock due to extensive burns 18 to 22 hours prior autopsy.”



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10. The Investigating Officer-P.W.15 examined witnesses Palanichamy, Papathy, Perumal, Pappammal, Raja, Varadharaj, Savadamuthu, Sajahan, Nagaraj, and another Palanichamy and recorded their statements.

11. On 4.12.2012 at 18:30 hours, he arrested the accused in the presence of Arunachalam, Perumal and recorded his confession statement under Ex.P12. Pursuant to the statement, he recovered the undergarment (jatty) under a recovery Mahazar in the presence of the presence of witnesses. The material objects were sent to court in Form - 95 Ex.P.13. He then examined Saravanan - Grade-I police – 1800, Shankarammal Grade-I Police – 172 and Dr.Somasundaram and recorded their statements.

12. After completion of the enquiry, he filed charge sheet against the accused.

13. After receipt of the charge sheet, the learned District Munsif-



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cum-Judicial Magistrate, Vedachandur, took the case on file in P.R.C.No. 18 of 2013 and issued summons to the accused. When the accused appeared, copies were supplied to him under Section 207 Cr.P.C. free of cost.

14. Since the case was exclusively triable by the Sessions Court, the District Munsif-cum-Judicial Magistrate, Vedachandur, committed the case records to the Principal District Judge, Dindigul, under Section 209 Cr.P.C.

15. The Principal District Judge, after receipt of the same, made over the case to the Additional Sessions Judge, Fast Track Mahila Court, Dindigul.

16. The Additional Sessions Judge, Fast Track Mahila Court, took up the case in S.C.No.149 of 2014 and framed charges under Section 302 I.P.C against the accused. The charges were explained to the accused and the accused denied the charges and claimed to be tried. Hence, the case



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was posted to trial.

17. On the side of prosecution, PW.1 to P.W.15 were examined Ex.P1 to Ex.P.13 were marked and M.O.1 to M.O.8 were produced.

18. After full trial, the learned Additional District Judge acquitted the accused from the charges vide judgment dated on 25.01.2018, against which the present appeal has been filed.

19. The learned counsel for the appellant argued that since the complainant expired during the trial, the mother of the Victim, filed the present appeal.

20. The accused and the deceased had illegal intimacy and she was conceived. The deceased insisted him to marry her. Since he refused, she threatened that she will reveal the same to the Village Panchayatars. Therefore, the accused wanted to kill her. The motive for the crime had been established by the prosecution.



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21. She further argued that on the fateful day, he poured kerosene on the victim lady and set her ablaze. He then ran away from the place of occurrence. The father of the victim girl witnessed the occurrence and reported the same to the respondent police. Based on his complaint, F.I.R. was registered and the law was set in motion. The medical evidence also supported the ocular evidence. At the time of death the victim lady was eight months pregnant and due to the cruel act committed by the accused, the foetus also died. The learned Judge failed to appreciate the evidence of P.W.1 and P.W.2, who were eyewitnesses to the occurrence.

22. She further argued that the learned Judge failed to consider that the bike belonging to the accused was parked in the place of occurrence and his dresses were recovered from the house of deceased. The same was elicited by P.W.1, in his evidence.

23. The learned Judge failed to consider the evidence of P.W.3,



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whose evidence clinchingly established the case.

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24. The reasons assigned by the Judge of the trial Court are unsustainable and liable to be set aside.

25. The learned counsel for the second respondent argued that the first and foremost reason stated by the prosecution is that there was illicit intimacy between the accused and the deceased but the same was not established by the prosecution.

26. The evidence of P.W.1 is not clear and there were contradictions in the evidence of P.W.1 and the statement recorded by the Investigation Officer under Section 161 Cr.P.C.

27. Except P.W.1, who is the father of the deceased, no one supported the prosecution case.

28. The sister of the deceased. who is alleged to be an eye witness,



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same was not sent to the forensic laboratory to prove that it contained petrol or kerosene.

32. The learned counsel for the second respondent stated that the prosecution failed to prove the guilt against the accused beyond all reasonable doubt. The accused was not involved in the crime and prayed that the criminal appeal has no merit and is liable to be dismissed.

33. The learned Additional Public Prosecutor argued that P.W.1, deposed about the illegal affair and also about the occurrence.

34. He further argued that P.W.1 during enquiry stated that the occurrence was witnessed by several persons, but, during trial, he has not stated about the same. Except P.W.1, no other witnesses supported the prosecution case and the trial Court acquitted the accused, since there is no evidence available to prove that the accused is guilt of the offence.

35. Both sides heard.



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36. Now this Court has to decide whether the judgement of the trial Court is sustainable or the prosecution proved the case beyond all reasonable doubt and the accused is found guilty of the offence.

37. The evidence and records were carefully scrutinized.

38. The prosecution case rests on eye witness. As per the prosecution, the motive attributed for the offence is that both accused and the deceased had illegal intimacy. Since the husband of the deceased was working at Coimbatore, the accused used to visit the house of the deceased and developed intimacy. Subsequently, the accused stopped visiting the deceased; the same was questioned by the deceased Jyothi @ Muniyammal (deceased), who threatened him that she will insult him in the presence of the Panchayatars. Therefore, the accused wanted to do away her. On the fateful day, viz., on 03.12.2012, the accused with the intention to kill her, took the kerosene from the kitchen and poured on the deceased and set fire and fled away from the place of occurrence.



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39. The illegal relationship between the accused and the deceased was not spoken to by any of the prosecution witness.

40. P.W.1 in his complaint, Ex.P1 stated that both his daughter Jyothi @ Muniyammal and the accused had illegal relationship. However, during chief examination he deposed that both the accused and his daughter Jyothi had money transaction. But, he has not deposed anything about the illicit relationship between them. The averment in the complaint and the evidence of P.W.1 before trial Court differs. Further, during cross examination by the defence counsel, he admitted that he had not written the complaint, he is an illiterate and the police had written the complaint and obtained his signature, which shows that he is not aware about the averment set out in the complaint. Therefore, the charge against accused that due to illegal intimacy he had with deceased, the victim picked up quarrel and he planned to kill the deceased has not been proved. The motive attributed by the prosecution for commission of murder, was not proved.



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41. Further, in the complainant, P.W.1 stated that when the accused attempted to set fire on the deceased, he entered into the house, but, contrary to the same, in the trial, he stated that before he entered into the place of occurrence, the accused set fire on her while his daughter was sitting in a porch and fled away. He has not properly stated the exact place of occurrence.

42. On careful analysis of the Observation Mahazar, the Investigating Officer noted in the Mahazer that a charred body found in a sitting poster in the Varandha in an unidentified condition, after fire, she would have come from kitchen and fell down in the Varandha.

43. Further, P.W.1 not stated anything about the measures taken to douse the fire and to save his daughter. If really P.W.1 was available, at the time of occurrence, definitely, he would have attempted to douse the fire with the help of neighbours, as the place of occurrence is surrounded by a number of houses and take his daughter to nearby Hospital to save



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her. No such steps were taken by the P.W.1. Further, P.W.15 – Investigating Officer and other witness deposed that they saw the dead body in the place of occurrence till the police reach and conducted autopsy. Therefore, as regards the presence of P.W.1 there is doubt in the mind of this Court.

44. P.W.2 - paternal Aunt of the deceased cited as an eye witness, by the prosecution, did not support the prosecution case, but, stated that she is the sister of P.W.1. She knew the accused, who used to visit his brothers house. Four years back, one day, her niece Jyothi and the deceased had quarrel. She left the place. Subsequently, she found the dead body of Jyothi. She was treated as hostile. During cross examination, she admits that on the date of occurrence, she has not seen the accused in the place of occurrence.

45. The husband of the deceased was examined as P.W.3. He deposed that he is not aware anything about the accused. His father-in-law informed that the accused set fire to his wife. He has not spoken anything about the difference of opinion between himself and the



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deceased and the illegal affairs his wife had with accused. He is only an hearsay witness. He stated that the witness Savada Muthu and Varadaraj handed over Dhoti and Shirt from the place of occurrence, but he has not deposed that it belonged to the accused.

46. As per Ex.P5, the Shirt and Dhoti left by the accused in the house of deceased were recovered in a seizure mahazar, in the presence of Varadharaj and Savada Muthu. Witness Savada Muthu was examined as P.W.7, but, he has not stated anything about the recovery of the material from the house of the deceased. He was treated as hostile. He deposed that the police obtained his signature in the hospital.

47. Thiru.Varadaraj, a relative of P.W.1 was examined as P.W.10. He deposed that on 03.12.2012, his uncle called him over phone and informed that his sister died due to fire. He went to the place at 8.00 pm., and saw the dead body of his sister and also noticed the bed and cot in a burnt condition. He found shirt, pant and bike. Police came and prepared rough sketch and Observation Mahazar. As per Ex.P5 recovery Mahazar,



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the material objects, namely, 5 Litres plastic cane. Match box, match sticks, broken bangles (eight numbers) and brown shirt and Lungi (black white green flower Lungi) and the two wheeler bearing Registration No.TN-57-AD-2647. However, it is not proved by the prosecution that who had identified that the dresses recovered from the place of occurrence as belonging to the accused. Therefore, it is not proved that the dresses alleged to be recovered from the house of the deceased belonged to the accused.

48. The sister of the deceased was examined as P.W.9. During her chief examination, she deposed that on 03.12.2012, her father called her through phone and informed that somebody set fire to her sister and he is not aware, who did the same and requested her to come to the Spot. She went to the residence of her father and found the dead body of her sister. The evidence of P.W.9 clearly shows that her father informed her that somebody sets fire on the deceased, which is totally contra to the complaint lodged by P.W.1 and the evidence let in by P.W.1.



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49. One Perumal was examined as P.W.3, who is alleged to be witness, to the confession and recovery from the deceased. As per prosecution theory, the accused in his confession statement stated that he came to the house of the deceased and had a fight with her and in order to do away her, he poured kerosene and set her ablaze and tried to contain the fire with bed, at that time, P.W.1 came over there, therefore, he left the place with inner garment alone and left his shirt and pant, and the two wheeler in the house of the deceased. Thereafter, he kept his undergarment in the backside of his house and tried to escape from the place, at that time, the police arrested him and recovered the undergarment (jatty) in the presence of one Perumal and Armugam. But, the witness Arumugam was not examined by the prosecution. But, the witness Perumal was examined as P.W.3 during trial has not stated anything about the confession, arrest and recovery. He denied signature in the confession statement. It is pertinent to point out that P.W.1 in his evidence, or in the complaint not stated that the accused ran away from the place of occurrence with undergarment. It is stated that the undergarment with kerosene was seized, but, it was not sent to the



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Forensic Department for chemical analysis. Hence the arrest, confession and recovery have not been proved.

50. Further, there is delay in lodging the complaint. As per the prosecution case, occurrence took place on 03.12.2012 at 16.00 hours, whereas P.W.1 during chief examination stated that it occurred at 15.00 hours. But, the information received by the police was at 20.00 hours. The distance between the place of occurrence and the Police Station mentioned in the F.I.R is 9-10 Km, but, the complainant did not report the occurrence, immediately after the occurrence. Though he stated that he witnessed the occurrence, he has not taken the victim girl to the nearest hospital to save her life. The dead body was kept in the place of occurrence, till the police visited the place of occurrence. P.W1 during cross examination admitted that the police came to the place of occurrence and prepared observation mahazer and rough sketch and thereafter, the dead body of the deceased was taken to the hospital. He further admitted that thereafter the police took him to Police Station and received the complaint. The delay in F.I.R has not been properly explained by the prosecution.



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51. Further, there is a delay in forwarding the F.I.R to the jurisdictional Magistrate. It reveals that the F.I.R was received by the Magistrate at 00:15 hours. P.W. 11, the Head Constable – Saravanan Veda sandur Police Station, during cross-examination admitted that the distance between the Police Station and the jurisdictional Magistrate Court situated nearby and they could reach within five minutes. Still there is a delay of more than three hours in despatching the F.I.R to the jurisdictional Magistrate. There is no explanation for the delay. Normally, the delay in registering the case will not affect the prosecution case, if any other plausible evidence is available but, in this case P.W.1 who is alleged to be an eyewitness, but, he has not filed the complaint soon after the occurrence. He admitted during the cross-examination that the police visited the place of occurrence at 05:30 and sent the dead body to the hospital. In such case, the police has power to register F.I.R without any delay and send the same to the jurisdictional Magistrate but that was not done.



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52. The mother of the victim, preferred the present appeal, is not an eye witness to the occurrence and she is only hearsay witness. She has been examined as P.W.6 and it reveals that she came to the place of occurrence after hearing the news of death of her daughter. During trial, she stated that Smt. Pappammal informed her that her daughter was murdered by the accused, Pappammal has been examined as P.W.2, but she did not support the evidence of P.W.6 - mother of the deceased.

53. Except P.W.1 none of the witnesses supported the prosecution case. The motive for the offence was not proved. The illegal relationship was not established. P.W.1 had not properly spoken about the occurrence. His presence is doubtful. The arrest, confession, recovery had not been proved.

54. On careful perusal of the entire records and the documents, there is no cogent evidence available to prove the guilt of the accused.

55. It is the duty of the prosecution to prove the guilt of the



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accused beyond all reasonable doubt. But, there is no evidence available to prove the guilt of the accused and therefore, the trial Court acquitted the accused from the charges.

56. There is no material available to interfere with the judgment of the trial Court. The criminal appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.

57. Accordingly, the Criminal Appeal stands dismissed.

(G.R.S.J) & (R.P.J)
14.11.2024

Index :Yes/No
Internet :Yes/No
NCC :Yes /No

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To
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- 1.The Sessions Judge,
Mahila Fast Track Court,
Dindigul.
2. The Inspector of Police
Vedasandur Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN,J.

AND

R. POORNIMA,J.

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Judgment made in
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