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CRL.A.(MD)NO.827 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MS.JUSTICE R.POORNIMA

CRL.A(MD)No.827 of 2022

Anthony muthu

... Appellant / Sole accused

Vs.

State through
The Inspector of Police,
Surandai Police Station,
Tirunelveli District.
(Crime No.71 of 2007)

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records connected to the judgment in S.C.No.195 of 2007 on the file of the Sessions Judge, Mahila Court, Tirunelveli dated 20.06.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Dr.R.Alagumani

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

* * *

**J U D G M E N T**

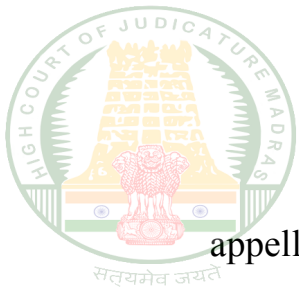
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This appeal is directed against the judgment dated 20.06.2016 in S.C.No.195 of 2017 on the file of the Sessions Judge (Mahila Court, Tirunelveli). By the impugned judgment, the appellant was convicted and sentenced as follows:-

Sections	Punishment	Fine	Default
302 IPC	Life Imprisonment	Rs.2,000/-	1 year Simple Imprisonment
506(ii) IPC	3 years Rigorous Imprisonment	Rs.1,000/-	6 months Simple Imprisonment

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

On 28.03.2007 at about 8.30 pm., when Michal Savarimuthu, son of the appellant herein, had returned home from Catholic Seminary, Palayamkottai, he saw the appellant quarreling with his mother Mariya Pushpam(deceased). Angered by her failure to prepare dry fish curry(Karuvattu Kuzhambu), the appellant caught hold of her hair and gave her a tight slap across her cheek, causing her to fall on the ground in an unconscious state. When Michal Savarimuthu(P.W.1) tried to intervene, he was threatened to stay away. At about 9.00 p.m., the



appellant poured kerosene on his wife Mariya Pushpam and set her ablaze. Thereafter, she was admitted in Government Hospital, Tenkasi by her brother Savarimuthu(P.W.3). Mariya Pushpam was declared as dead in the early hours at 3.15 a.m on 29.03.2007. Based on Ex.P.1 complaint given by the appellant's son(PW1), Crime No.71 of 2007 was registered on the file of Surandai police station, Tirunelveli. P.W.19 conducted investigation and filed final report before the Judicial Magistrate, Thenkasi. It was taken on file in P.R.C.No.19 of 2007 and it was committed to the file of the Sessions Court in S.C.No.195 of 2007. It was made over to the Mahila Court, Tirunelveli. Charges were framed against the appellant for the offence under Section 4 of Tamil Nadu Prevention of Harassment of Women Act, Sections 302 and 506(ii) IPC. The appellant denied the charges and claimed to be tried. The prosecution examined P.W.1 to P.W.19 and Ex.P.1 to Ex.P.10 were marked. Incriminating circumstances were put to the accused and he characterized the same as false. On the side of the accused, no evidence was adduced. After hearing the learned counsel on either side and considering the evidence on record, the trial Court convicted the accused for the offences under Sections 302 and 506(ii) IPC and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.



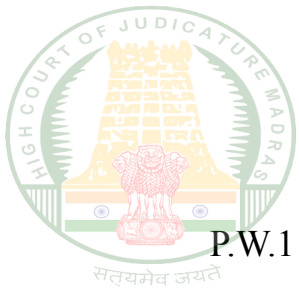
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3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and submitted that the prosecution has failed to prove the case against the accused beyond reasonable doubt. His contention is that the presence of the so called eyewitnesses in the scene of occurrence is doubtful. He submitted that the deceased died due to a kitchen accident and that the appellant had been falsely implicated. He called upon this Court to set aside the impugned judgment and acquit the appellant.

4. Per contra, the learned Additional Public Prosecutor appearing for the State submitted that the prosecution has convincingly proved the charge of murder against the accused and called upon this Court to sustain the impugned order. He prayed for dismissal of the appeal.

5. We carefully considered the rival contentions and went through the evidence on record.

6. The case of the prosecution is that the accused murdered his wife Mariya Pushpam by pouring Kerosene on her and setting her afire.

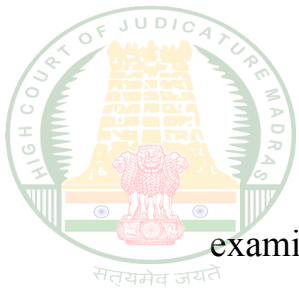


P.W.1 and P.W.2 are none other the children of the accused / appellant.

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P.W.1(son) was then pursuing a Theology course in the Catholic Seminary, Palayamkottai. He deposed that he had returned home on 28.03.2007. He testified that at around 8.30 pm., his father returned and started quarrelling with his mother as to why dry fish (Kuzhambu) gravy had not been prepared. Thereupon, the accused asked P.W.1 to leave the house. When the mother(deceased) objected, the accused slapped her. Mariya Pushpam fell down in an unconscious state. The accused then poured Kerosene on his wife and he also criminally intimidated P.W.1 with dire consequences. Feeling terrified, P.W.1 ran away. He returned home at 10.15 p.m., and by the time he returned, the occurrence had already taken place. Mariya Pushpam had been taken in an ambulance to the Government Hospital, Tenkasi by their uncle(P.W.3).

7. P.W.1 had two sisters namely Arputha Soosai P.W.2 and Rayammal P.W.6. P.W.6 was then studying in 10th standard at Vadiyur. After she returned home from tuition at around 10.00 p.m., both P.W.1 and P.W.2 went to the Government Hospital, Tenkasi. Their mother died at around 3.15 a.m on 29.03.2007. At about 5.00 a.m, P.W.1 lodged a written complaint (Ex.P.1) in Surandai police station. When he was cross



examined, suggestion was put to him that he was not present at home on the occurrence date and time, and that he was only in the seminary.

Interestingly, it was not suggested to P.W.1 that the deceased committed self-immolation. Instead, it was suggested that when Mariya Pushpam was engaged in cooking, her saree accidentally caught fire and died as a result of the injuries suffered by her. He categorically denied the cause of death as due to fire by accident. P.W.2 is the daughter. She also corroborated the testimony of her brother(P.W.1). Her presence was also challenged in cross examination. The suggestion put to her was that kerosene lamp fell on Mariya Pushpam and that the saree worn by her accidentally caught fire, and as a result Mariya Pushpam died. She also categorically denied the possibility of accidental fire. P.W.3 is the elder brother of the deceased. He received information on the occurrence date and it was he who arranged to shift Mariya Pushpam to the hospital. He deposed that his sister told him that she was set fire. Mariya Anthony P.W.4 is a neighbour but he is not an eyewitness. John Paul P.W.5 is also a neighbour. He deposed that on 28.03.2007, when burning smell emanated from outside, he realized that something was amiss and rushed out. He saw the accused bringing out Mariya Pushpam, wife of the accused in a burning state. When P.W.5 questioned the accused as to why



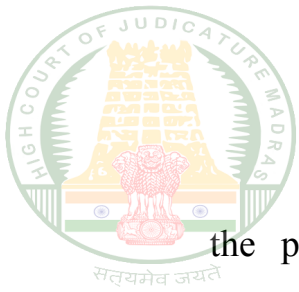
he had set her ablaze, the accused replied that Mariya Pushpam had self-immolated herself. When P.W.4 and P.W.5 were engaged in dousing fire, the accused fled from the scene of occurrence. P.W.6, the daughter of the accused deposed about the acts of cruelty committed by the accused against her mother. P.W.7 is a mahazar witness. P.W.9 is also a mahazar witness. P.W.10 is the photographer who took photographs of the occurrence spot. P.W.11 was working as Assistant Surgeon in the Government District Headquarters Hospital, Tenkasi. He deposed that on 28.03.2007 at around 10.00 p.m., Mariya Pushpam was admitted with 80% burn injuries and was declared dead at 3.15 a.m. on 29.03.2007. Accident Register entry Ex.P.7 and Death Intimation Ex.P.8 were marked through him. P.W.12 was also working as Assistant Surgeon in Thenkasi Government Hospital. She deposed that on 29.03.2007 at 06.15 p.m., the accused / appellant was brought to the hospital by P.W.14 police constable. He was given treatment for burn injuries in his left thumb. P.W.13 conducted postmortem and issued Ex.P.11 postmortem report. P.W.19 Inspector of Police conducted the investigation.

8. The question that calls for consideration is whether it is a case of homicidal violence and whether the eyewitnesses were actually present



in the scene of occurrence. The presence of the accused at the time of occurrence in his house is beyond dispute. This is fortified by the fact that he had also suffered a minor burn injury as deposed by P.W.12 who examined him.

9. The conduct of the accused after the occurrence is also a relevant factor. The principle of *res gestae* can be invoked. Though mere absconding by itself does not lead to a firm conclusion of guilty mind, the act of absconding is no doubt a relevant piece of evidence to be considered along with other evidence. (*vide Girish Chandra V. State of Uttar Pradesh (1971) 2 SCC 75*). In the present case, the accused is not a stranger to the deceased. He is the husband of the deceased. The contention of the defence was that the deceased died due to a fire accident. However, if that be so, a dutiful husband would have taken his wife to the hospital himself. But he did not do so. Instead, he escaped from the spot. This is convincingly established by the testimony of P.W. 5(John Paul) and P.W.4(Mariya Anthony). The conduct of the accused assumes great significance. Since the accused fled from the spot, an inference can be drawn that it was he who poured Kerosene on his wife and set her ablaze which is consistent with the prosecution theory. Thus



the prosecution case would stand independently even without the testimony of P.W.1 and P.W.2. P.W.1 and P.W.2 are the children of the accused and they had no motive to falsely implicate their own father. Their mother had already died and by implicating the father, they do not stand to gain anything. We do not doubt their presence. It is true that both P.W.1 and P.W.2 claimed that they left the home after they saw their father pouring Kerosene on their mother. The learned counsel for the appellant would claim that this is not a natural conduct of a grown-up son. P.W.1 and P.W.2 have deposed that their mother had always been ill-treated. Once her hair bun was cut off for a flimsy reason. For another reason, her pinky finger was broken. When the children are used to seeing their father repeatedly behave in an abusive manner, the children's act of leaving the house out of fear cannot be said to be unnatural. There is no reason to disbelieve the testimony of P.W.1 and P.W.2.

10. The theory projected by the defence is that it was an accidental fire. The forensic evidence clearly states that Kerosene was found on the body of the deceased. This is consistent with the prosecution version that Kerosene was poured on the deceased and thereafter she was set fire.



WEB COPY 11. This is a case in which Section 106 of the Indian Evidence Act, 1872 also can be pressed into service. The accused was present in the house when the occurrence took place. What happened at the time was especially within his knowledge and has to be proved by him. He has not discharged the burden cast on him. The Court below rightly came to the conclusion that the prosecution had established its case beyond reasonable doubt. There is no merit in this appeal. The judgment dated 20.06.2016 in S.C.No.195 of 2007 passed by the learned Sessions Judge, Mahila Court, Tirunelveli is confirmed and this criminal appeal is dismissed. No costs.

(G.R.SWAMINATHAN, J.) & (R.POORNIMA, J.)
13.12.2024

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

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To:

1. The Sessions Judge,
Mahila Court, Tirunelveli.
2. The Inspector of Police,
Surandai Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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