



CrI.A.No.328 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE M. JOTHIRAMAN

CrI.A.No.328 of 2019

R.Murugesan

... Appellant

Vs.

State by
The Inspector of Police,
E-3, Teynampet Police Station,
Chennai – 6.
Crime No.2361 of 2008.

... Respondent

Prayer : Criminal Appeal filed under Section 374 Cr.P.C., against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.III, Chennai-1, in S.C.No.130 of 2009, dated 23.12.2009.

For Appellant : Mr.S.Pushpakaran

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Mr.M.Karthikeyan



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J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

This Criminal Appeal has been filed against the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court No.III, Chennai-1, in S.C.No.130 of 2009, dated 23.12.2009, convicting and sentencing the appellant/sole accused as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 363 IPC	Five years rigorous imprisonment and fine of Rs.10,000/-, in default, three months simple imprisonment
Section 302 IPC	Life imprisonment and fine of Rs.10,000/-, in default, six months simple imprisonment
The sentences shall run concurrently.	

2.The case of the prosecution is as follows :

One Amudha and her child Danam (deceased) are platform dwellers. The accused was in relationship with the said Amudha. On 16.11.2008 at about 10 p.m., when the accused took the said Amudha and her child to park to have relationship with her, on seeing that, when the deceased child cried,



the accused felt that the child was causing nuisance to his enjoyment and decided to do away with the child. Therefore, he forcibly took both Amudha and her child (deceased) in an Auto and after some distance, he pushed aside the said Amudha out of the Auto and took the deceased child alone in the Auto and on the Seethammal Road, got down from the Auto, and pulled out the child, poured petrol on her head, and lighted fire and fled away in the Auto. Amudha is said to have followed the Auto for her child, but she could not find the Auto.

3. When P.W.1, who was working as a Driver in the Fire Services Department, was returning to his house from his job at about 11.25 p.m., he saw a 4 year old child walking on the road with burn injuries on Thiruvalluvar Road near Police Booth. Immediately, he enquired the child, however, the child did not speak anything. Therefore, he called the Police and also the Ambulance. An Ambulance from Apollo Hospital came and he sent the child in the Ambulance. Thereafter, he went to the Police Station and lodged a complaint (Ex.P1).

4.P.W.18 (Sub-Inspector of Police, Teynampet Police Station)



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received the complaint (Ex.P1) and registered an FIR in Crime No.2361 of 2008 (Ex.P19) under the head “Accidental Fire” and forwarded the FIR to the Court and a copy to the Inspector of Police.

5.P.W.19 (Inspector of Police) took up the investigation. At that time, the mother Amudha also came to the Police Station, who had come in search of her child. She has stated that she and her child are road side dwellers and she used to have relationship with the accused. On that day, i.e., on 16.11.2008, at about 10.00 p.m., when she went with the accused to Park along with her child, the accused got angry due to the cry of her child and said that he will do away with her child. By saying so, he took her and her child in an Auto. Near Alwarpet Bridge, he pushed her out of the Auto and took her child alone in the Auto. She followed the Auto. When she came near Thiruvalluvar Road at Teynampet, she saw a crowd gathered and when she enquired, she came to know that a child came with full of burn injuries and they sent the child to the hospital. Therefore, she suspects that the accused should have set her child ablaze. The statement of Amudha was recorded and the same is marked as Ex.P20.



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6. Based on the statement given by Amudha (Ex.P20), the Investigating Officer (P.W.19) altered the case to Sections 363 and 307 IPC vide Alteration Report (Ex.P21). Thereafter, he went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P22). Thereafter, he recorded the statements of the witnesses P.W.2, P.W.3 and P.W.4, P.W.5.

7. P.W.2 was an Auto Driver. When he was returning to his house after attending a Pooja, at about 11.15 p.m. on 16.11.2008, he saw an Auto being driven in a rash and negligent manner. The accused, who was driving the Auto, pushed a child out of the Auto and poured petrol on the child and set her ablaze and fled away in the Auto. P.W.2 chased the Auto for some time, however, the Auto had gone the other side and he could not catch him. When he came back and searched the child, in the meanwhile, people said that the child was taken to the Hospital.

8. P.W.3 has also seen the accused throwing Amudha from the Auto and taking the child in the Auto. P.W.4 has seen the accused beating the child at around 11 p.m. on 16.11.2008. P.W.5 has also seen the child

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without dresses on her body. On seeing the child, he called the Apollo Hospital Ambulance and after the Ambulance came, he sent the child to the Hospital in the Ambulance.

9.P.W.8 (Ambulance Driver) took the child to the Kilpauk Medical College Hospital. P.W.12 (Medical Officer attached to the Kilpauk Medical College Hospital) admitted the child at 11.40 p.m. in the Hospital and found burn injuries on the face, chest and both hands and legs and issued Accident Register (Ex.P7).

10.P.W.13 (Medical Officer) gave treatment to the child who had sustained 98% burn injuries. However, the child died on 18.11.2008 at 2.15 a.m. and she (P.W.13) informed the Police about the death of the child vide Ex.P8.

11.On receipt of information from the Kilpauk Medical College Hospital about the death of the child, the Investigating Officer (P.W.19) altered the case again to Sections 363 and 302 IPC vide Alteration Report (Ex.P23). Again, he went to the place of occurrence and prepared

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Observation Mazahar (Ex.P3) and Rough Sketch (Ex.P24). Then, he went to the Kilpauk Medical College Hospital and conducted inquest over the dead body and prepared Inquest Report (Ex.P25). He arranged for taking photographs of the deceased and the photographs are marked as M.O.4. Thereafter, he sent the dead body for post-mortem through Head Constable (P.W.10) along with requisition letter (Ex.P9).

12.P.W.14 (Medical Officer) conducted autopsy on the body of the deceased child and opined that the deceased would have died of hypovolumic shock due burns 98% and issued Post-mortem Certificate (Ex.P10).

13.In the meanwhile, the Investigating Officer (P.W.19) arrested the accused and recorded his confession in the presence of witnesses P.W.7 and one Murugan, the admissible portion of which is marked as Ex.P.4. Based on the confession, the Investigating Officer seized the Auto driven the accused (M.O.3), plastic bottle (M.O.1) and Match Box (M.O.2) under Seizure Mahazar (Ex.P5). Then, he sent the accused to judicial custody and the collected materials to the Court under Form-91. Since the said Amudha

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did not have any permanent residence, the Investigating Officer sent her to the Womens' Home. Thereafter, he referred the accused for taking potency test vide requisition letter (Ex.P26). P.W.15 (Medical Officer) examined the accused and issued Potency Certificate (Ex.P12).

14. Thereafter, the Investigating Officer (P.W.19) requested the Magistrate to conduct an Identification Parade vide requisition letter (Ex.P27). P.W.16 (Judicial Magistrate) conducted the Test Identification Parade in the Central Prison and the witnesses P.W.2, P.W.3 and P.W.4 have identified the accused all the three times.

15. After recording the statements of all the witnesses and collecting various reports, the Investigating Officer (P.W.19) completed the investigation and filed a final report as against the accused for the offences under Sections 341, 363 and 302 IPC in P.R.C.No.25 of 2009 before the XVIII Metropolitan Magistrate, Saidapet, Chennai.

16. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of

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Session in S.C.No.130 of 2009 and made over to the Additional District and Sessions Judge (Fast Track Court No.III), Chennai, for trial.

17.The trial Court framed the charges under Sections 363 and 302 IPC as against the accused. When questioned, the accused pleaded “not guilty”.

18.To prove the guilt of the accused, the prosecution examined P.W.1 to P.W.19, marked Exs.P1 to P27, and produced M.Os.1 to 4.

19.When the incriminating materials were put to the accused and questioned under Section 313 Cr.P.C., he denied the same. However, on the side of the accused, no witness was examined nor any document marked.

20.The trial Court, after appreciating the oral and documentary evidence and materials on record, by its judgment dated 23.12.2009, found the accused guilty of the offences under Sections 363 and 302 IPC and convicted and sentenced him as stated *supra*.



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21.Challenging the conviction and sentence, the accused has preferred the above appeal.

22.Learned counsel for the appellant/accused would submit that the FIR (Ex.P19) itself is doubtful in this case. Ex.P1 (complaint) given by P.W.1, in fact, does not contain the name of the child, whereas, the FIR (Ex.P19) contains the name of the child. This itself creates a serious doubt on the case of the prosecution. The mother Amudha has not been examined for the reasons best known to the Investigating Officer. The evidence of P.W.1 to P.W.4 is highly doubtful. Therefore, their evidence alone is not sufficient to convict the accused for the grave crime. Hence, he prayed for extending the benefit of doubt to the accused.

23.Whereas, the learned Additional Public Prosecutor would submit that the accused developed relationship with the mother of the deceased child. Since the mother and child were platform dwellers, taking advantage of the same, the accused used to have sex with the mother of the child. As

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the child was a hindrance to their relationship, the accused poured petrol on the child and set her ablaze, which has been spoken by the witnesses P.W.1 to P.W.4, who are the eye-witnesses. Therefore, the judgment of the trial Court does not require any interference.

24.We have perused the entire materials available on record.

25.The accused faces a charge of murder under Section 302 IPC. The law was set in motion on the basis of the complaint (Ex.P1) lodged by P.W.1. It is to be seen that P.W.1 was, in fact, returning from his job at about 11.15 p.m. on 16.11.2008, and at that time, he has seen the child at Thiruvalluvar Road, walking with full of burn injuries and also enquired the child. As the child did not say anything, he called the Ambulance. P.W.8 (Ambulance Driver) brought the Ambulance and took the child and admitted her in the hospital. P.W.12, who admitted the child in the hospital, found that the child was full of burn injuries and issued Accident Register (Ex.P7) to that effect.

26.In the meanwhile, P.W.1 went to the Police Station and gave a



complaint (Ex.P1). The evidence of P.W.1 also indicates that, when he reached the Police Station, the mother of the child was very much present there. No doubt, though the FIR should contain only the details narrated in the complaint, in the FIR (Ex.P19), the name of the child is also referred to, which is not proper. However, we are of the view that mere addition of name of the child in the FIR would not affect the prosecution case in entirety, in view of the other evidence available as against the accused.

27.P.W.1, who was a stranger, has seen the child with burn injuries and took steps to admit the child through Ambulance. P.W.8 took the child in his Ambulance and admitted her in the Kilpauk Medical College Hospital. The Medical Officer (P.W.12) has seen the child with burn injuries. P.W.13 (Medical Officer), who gave treatment to the child has also noted 98% burn injuries on the child. P.W.14, who conducted autopsy on the body of the deceased, has also noted 98% burn injuries all over the body of the child.

28.P.W.2, who was a resident of that area, while returning to his house after attending an Ayyappan Pooja, saw the Auto driven by the accused and

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at that time, the child was thrown out from the Auto and the accused also poured petrol on the child and set her ablaze. P.W.2 has chased the Auto for sometime, however, he could not stop the Auto. When he came back to the place, by that time, the child was taken to the hospital by some other persons. It is relevant to note that, in his cross-examination, he (P.W.2) has clearly asserted that he tried to stop the Auto and in fact, he chased the Auto for sometime, but he could not stop him, and therefore, he came back to the spot, however, by that time, the child was taken to the hospital by others. He also identified M.O.1 (plastic bottle). P.W.2 also identified the accused in the Identification Parade. In the cross-examination, though a suggestion was put to P.W.2 to the effect that the accused was shown to him in the Police Station, it has been clearly denied by him.

29. Similarly, P.W.3 has also seen the accused travelling with the child. He has also identified the accused in the Identification Parade.

30. P.W.4, who was an Auto Driver, has also seen the accused beating the child on the same day at the relevant point of time. Thereafter, he has also identified the accused in the Identification Parade.



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31.The evidence of P.W.2 to P.W.4 clearly proves the complicity of the accused with the crime. There is no reason, whatsoever, to falsely implicate the accused unnecessarily. Admittedly, the child was seen by P.W.2 to P.W.4 with the accused on the date of occurrence at the relevant point of time. The child has suffered 98% burn injuries and was admitted in the hospital and she died later.

32.Meanwhile, Amudha, the mother of the child, who was in search of her child, has come to the Police Station, which has been seen by P.W.1. However, the said Amudha has not been examined by the prosecution. But, the same has been explained by the prosecution. Since she was wandering in the streets, she was admitted in the Women's Home run in the name of Tamil Nadu Pengal Inaippu Kulu Sangamam Aalosanai matrum Pengal Paadhugaapu Maiyam. However, she went missing from the said Home from 06.12.2008. In this regard, a complaint (Ex.P17) has been lodged by the Manager of the said Women's Home, which was received by P.W.17, Sub-Inspector of Police, Peravallur Police Station, and an FIR has also been registered in Crime No.643 of 2008 for "woman missing". This aspect has

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been clearly spoken by P.W.17. Her whereabouts could not be traced. Be that as it may.

33.In any event, the fact remains that the evidence of the eye-witnesses clearly points to the guilt of the accused. Merely because the mother of the deceased child, who was a road side dweller went missing and could not be examined by the prosecution, that cannot be a ground to disbelieve the entire evidence of P.W.1 to P.W.4, who all have no axe to grind against the accused. No motive, whatsoever, established for false implication of the accused. Further, P.W.2 to P.W.4 have identified the accused in the Identification Parade conducted by P.W.16. P.W.16 (Judicial Magistrate) has also clearly spoken about the procedure followed during the Identification Parade and that the accused was identified by all the three witnesses P.W.2, P.W.3 and P.W.4 on all three times.

34.In view of the above, we are of the view that the judgment of conviction and sentence passed by the trial Court does not warrant any interference. Accordingly, this Criminal Appeal lacks merits and the same is dismissed.



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(N.S.K., J.) (M.J.R., J.)
10.11.2025

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order
Neutral Citation : Yes

To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Chennai-1.
- 2.The Inspector of Police,
E-3, Teynampet Police Station,
Chennai – 6.
- 3.The Public Prosecutor,
High Court, Madras.



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