



Crl.A(MD)Nos.10 and 648 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	13.10.2025
Pronounced on	04.11.2025

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.A(MD)Nos.10 and 648 of 2022

1. Nageswari	: Appellant/ Accused 2 in Crl.A(MD) No.10 of 2022
2. Muniyandi	: Appellant/ Accused 1 in Crl.A(MD) No.648 of 2022

Vs.

The State Rep. By its
The Inspector of Police,
K.Pudur Police Station,
Madurai District

: Respondent/ Complainant in both
appeals

Common Prayer:-This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the judgment dated 07.10.2021 made in S.C.No.322 of 2018 by the learned IV Additional District and Sessions Judge, Madurai



Crl.A(MD)Nos.10 and 648 of 2022

WEB COPY For Appellants : Mr.M. Jegadeesh Pandian

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

COMMON JUDGMENT

P.VELMURUGAN, J.,

These Criminal Appeal are directed against the judgment of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Madurai in S.C.No.322 of 2018 dated 07.10.2021. The appellant in Crl.A.No.10 of 2022 is A2 and the appellant in Crl.A.No.648 of 2022 is A1.

2. For sake of convenience the accused are referred to as per their rank before the trial Court

3. By the above said judgment, the trial Court convicted the appellants and sentenced them as detailed below:



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Penal Provisions	Sentence of Imprisonment	Fine Amount
302 of IPC(A1)	Life Imprisonment	Rs.5,000/- i/d to under go six months simple imprisonment
114 of IPC(A2)	Life Imprisonment	Rs.5,000/- i/d to under go six months simple imprisonment

3. The case of the prosecution in brief:-

3.1 The appellants are husband and wife. The deceased is the mother of A2 and mother-in-law of A1. Prior to the occurrence, the father of A2 executed a settlement deed for a house in favour of A2. In the disputed house, the deceased and appellants were living. The appellants attempted to vacate the deceased from the disputed house to a rental house, but the attempt failed. Due to this, there was a wordy quarrel and hence on the fateful day, on 04.02.2018, there was a wordy quarrel between the appellants and the deceased during which A1 is said to have attacked the deceased with a small stone and made her fall. Thereafter, A2 instigated A1 to kill the deceased by sprinkling kerosene and setting her on fire. Accordingly, A1 sprinkled kerosene on the deceased and set her ablaze. Immediately, the deceased was taken to the



hospital and admitted for treatment and thereafter, on 23.02.2018, the deceased succumbed to her injuries. Initially, the case was registered in Crime No. 60 of 2018 for the offence under Section 307 of IPC and thereafter altered to Sections 324, 302 r/w. 109 of IPC.

3.2. After completion of the investigation, the respondent police laid the charge sheet before the learned Judicial Magistrate No.VI, Madurai, and the same was taken on file as P.R.C. No.64 of 2018.

3.3. On the appearance of the accused, the provisions of Section 207 of Cr.P.C. were complied with, and the case was committed to the Court of Session, where it was taken on file in S.C.No.322 of 2018 and made over to the learned IV Additional District and Sessions Judge, Madurai, for trial under Section 209(A) of Cr.P.C. The trial Court framed charges against the first accused for the offence punishable under Section 302 of IPC and the second accused for the offence punishable under Sections 114, 302 r/w. 34 of IPC.



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3.3. In order to substantiate the case of the prosecution, the prosecution examined 19 witnesses as P.W.1 to P.W.19, and 22 exhibits were marked as Ex.P.1 to Ex.P.22, and 2 material objects were exhibited as M.O.1 and M.O.2.

3.4. After examination of the prosecution witnesses, when the appellants were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the charges as false. No witness was examined on the side of the accused, nor was any document marked.

4. The trial Court, after considering the evidence on record and hearing both sides, by judgment dated 07.10.2021, convicted the appellants and sentenced them as detailed in Paragraph No.2 supra. Challenging the above-said conviction and sentence, the appellants have filed the present appeal.



5. The learned Counsel appearing for the appellants would submit that there are no eyewitnesses in this case and the conviction is based on the dying declaration given by the deceased and the prosecution has not proved the mental status of the deceased at the time of giving the dying declaration. A dying declaration is not a substantive piece of evidence and it requires corroboration. From the evidence of P.W.17, the Judicial Magistrate who recorded the dying declaration admitted that during the recording of the dying declaration of the deceased, the deceased stated that she was unduly influenced to give the dying declaration and the same has been reflected in Column No.6 of the dying declaration and therefore the veracity of the dying declaration is under serious question on that score the dying declaration is liable to be rejected. Further, he would submit that the trial Court failed to consider the fact that except for the confession statement of the co-accused, nothing was proved against A2.

6. The specific case of the prosecution is that there was a settlement deed which was the main cause for the crime however, the settlement deed was not recovered. The prosecution did not prove the



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motive and the trial Court failed to consider the fact that the deceased died due to burn injuries. Though the occurrence took place on 05.02.2018, the injured died on 23.02.2018, therefore the cause of death is not due to burn injuries. Further, the main case of the prosecution is that A1 poured kerosene on the deceased and set her on fire. However, there are no medical records to show that there was any kerosene smell or substance on the body of the deceased and therefore the prosecution has failed to prove its case beyond reasonable doubt, and if two views are available, the view in favour of the accused has to be taken into consideration and the benefit of doubt has to be extended to the accused and therefore, the benefit of doubt may be extended to the appellants and the appeal is liable to be allowed and the appellants ought to be acquitted.

7. The learned Additional Public Prosecutor would submit that the first appellant is the daughter of the deceased and the second appellant is the son-in-law of the deceased. There was a dispute between the appellants and the deceased regarding ownership of the house in which they were residing and due to that motive A1 hit the deceased with a



stone and poured kerosene and set her on fire. A2 abetted A1 in the commission of the offence committed by A1. Therefore, based on the statement given by the deceased while being admitted in the hospital, the respondent police registered a case originally for the offence under Section 307 of IPC and later after the death of the deceased the case was altered to Sections 324, 109 and 302 of IPC and a charge sheet was filed. In order to substantiate the case of the prosecution, 19 witnesses were examined and 22 exhibits were marked, besides two material objects were exhibited. P.W.1 is the son of the deceased and P.W.2 is the grandson of the deceased and they have spoken about the motive behind the crime, and the deceased herself gave a complaint statement before the police while being admitted in the hospital, based on which the case was registered against the appellants. Even prior to that, while being admitted in the hospital she made a statement before the doctor, who also entered it into the Accident Register/Ex.P.9 and even in the accident register itself the doctor had mentioned the name of the appellants. The deceased stated the names of the appellants before the doctor as the persons who set fire on her. Subsequently, a dying declaration was recorded from the deceased by the Magistrate /P.W.17,



whereas P.W.16 gave a certificate about the mental status of the deceased immediately before recording the dying declaration and subsequently she died. Further, P.W.15 /doctor who conducted the autopsy on the body of the deceased also mentioned the antemortem injuries and therefore, the prosecution has proved its case beyond reasonable doubt. The trial Court has also correctly appreciated the evidence and convicted the appellants for the charged offence and therefore there is no merit in the appeal and the appeal deserves to be dismissed.

8. We have considered the submissions of the learned Counsel for the appellants and the learned Additional Public Prosecutor for the State and have consciously gone through the evidence and materials on record.

9. It is the specific case of the prosecution that on the fateful day, on 04.02.2018, there was a wordy quarrel between the appellants and the deceased during which A1 is said to have attacked the deceased with a small stone and made her fall. Thereafter, A2 instigated A1 to kill the



deceased by pouring kerosene and setting her on fire. Accordingly, A1 poured kerosene on the deceased and set her on fire. Immediately, the deceased was taken to the hospital and admitted for treatment and thereafter, on 02.03.2018, the deceased succumbed to injuries. In this case, in order to substantiate the charges levelled against the appellants, the prosecution has examined 19 witnesses, out of which two witnesses were examined as P.W.1 and P.W.2 for proving the motive. The case was registered based on the statement made by the deceased. Therefore, in this case, the injured herself made a complaint before the respondent police and based on the same, the case was registered. Even a reading of Ex.P.9/Accident Register, which was recorded by P.W.14/doctor, shows that on 05.02.2018 at about 2.30 a.m., the deceased was brought to the hospital in a 108 ambulance and the doctor enquired the deceased about the cause of the injuries and the injured had stated that the appellants set her on fire. Ex.P.9/Accident Register shows that the doctor has mentioned the names of the appellants who had caused injuries to the patient. Further, he stated that upon clinical examination it was found that the deceased sustained 30-40% burn injuries and he also made a request to the Judicial Magistrate to record her statement. So, based on



that proceedings were issued and Ex.P.9 is the copy of the Accident Register. Ex.P.10 is the request given to the Judicial Magistrate from the Government hospital. Ex.P.12 is the certificate issued by the doctor regarding the mental status of the injured for giving the dying declaration. Ex.P.14 is the dying declaration, Ex.P.15 is the statement made by the deceased at the time of taking treatment and Ex.P.11 is the post-mortem report.

10. P.W.14 is the doctor who admitted the deceased. P.W.15 is the doctor who conducted the post-mortem. P.W.16 is the doctor who gave the certificate for recording the dying declaration. P.W.17 is the Magistrate who recorded the dying declaration. Therefore, a combined reading of the evidence of P.W.1 and P.W.2 shows that motive for the occurrence has been established by the prosecution. Ex.P.15 and Ex.P.16/the complaint of the deceased show the allegations of setting her on fire. The evidence of P.W.14 is very clear that A1 caused burn injuries by pouring kerosene and setting her on fire. A2 abetted the commission of the offence and Ex.P.14/dying declaration is very clear that A1 is the person who caused burn injuries and the post-mortem report /Ex.P.10



shows that the deceased died due to burn injuries. Therefore, the death of the deceased is unnatural.

11. The main defence taken by the appellants is that the prosecution has not proved the mental status of the deceased for giving the dying declaration. From the evidence of P.W.15, it is seen that she was under some influence while giving the statement. However, reading of the entire materials shows that she understood the situation and the doctor also gave a certificate that she was conscious, and this will not throw away the case of the prosecution based on the dying declaration. P.W.14, while admitting the deceased in the hospital and while she was alive for treatment, stated that the deceased was conscious and oriented and she also stated the cause of injury and the person who caused the injury and Ex.P.9 also proves the same. Therefore, from the evidence of P.W.1 and P.W.2, motive is established. From the evidence of P.W.9 and P.W.14, the occurrence is proved and even the deceased herself gave a statement before the police officer for setting the law in motion and that was also corroborated by the evidence of P.W.14 and Ex.P.9. Further, the same was corroborated by the evidence of P.W.17. Therefore, the



evidence of P.W.1, P.W.2, P.W.3, P.W.14, P.W.15, P.W.16 and P.W.17 is cogent, consistent and reliable and there is no reason to discard their evidence.

12. The deceased herself, while she was alive, gave a complaint and also made a statement before the doctor while admitted in the hospital and also subsequently made a statement before the Magistrate that A1 attacked her with a stone and poured kerosene and set her on fire. A2, who is none other than the daughter of the deceased, was all along with A1 and also induced A1 to cause injuries. Therefore, from the above-said materials, this Court finds that the prosecution has proved the case beyond all reasonable doubt.

13. Since the occurrence took place on 05.02.2018 and the injured was admitted in the hospital on the same day and thereafter died only on 23.02.2018, originally the case was registered under Section 307 of IPC and subsequently altered to Section 302 of IPC after the death of the injured. Therefore, this Court finds that the appellants have not committed the offence under Section 302 of IPC, however, they have



Cr1.A(MD)Nos.10 and 648 of 2022

committed the offence under Section 307 of IPC.

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14. In the result, these Criminal Appeals stand partly allowed. The conviction under Section 302 of IPC passed by the learned IV Additional District and Sessions Judge, Madurai in S.C.No.322 of 2018 is set aside and instead, the appellants are convicted under Section 307 of IPC. Accordingly, the sentence of life imprisonment passed by the Court below is set aside and the appellants are sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5,000/-, in default, to undergo six months' simple imprisonment. The period of sentence already undergone by the appellants shall be set off under Section 428 of Cr.P.C. as against the substantive sentence.

(P.V.,J.) (L.V.G.J.,)

04.11.2025

Index : Yes/No

Internet : Yes/No

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Cr1.A(MD)Nos.10 and 648 of 2022

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- To:
- 1.The IV Additional District and Sessions Judge, Madurai
 2. The Inspector of Police,
K.Pudur Police Station,
Madurai District
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 4. The Section Officer
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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