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Cr1.A(MD)No.215 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	31/01/2025
Date of Pronounced	12/03/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Cr1.A(MD)No.215 of 2019

Ananthalakshmi : Appellant/Sole Accused

Vs.

State Represented by
The Inspector of Police,
Sankarankovil Town Police Station,
(Crime No.132 of 2015) : Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records in SC No.70 of 2016 on the file of the 1st Additional District & Sessions Judge, Tirunelveli District and set aside the judgment, dated 15/04/2019 by acquitting the accused.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in SC No.70 of 2016, dated 15/04/2019 by the 1st Additional District & Sessions Judge, Tirunelveli District.



2.The case of the prosecution in brief:-

The deceased Manimegalai lived with Nambirajan at Thiruvalluvar Nagar in Sankarankovil. Nambirajan married the accused Ananthalakshmi. So Nambirajan lived with his wife Ananthalakshmi and their children at Thirupur Kumaran Nagar in Sankarankovil. Nambirajan decided to visit Palani Temple with the deceased Manimegalai. The accused Ananthalakshmi requested him to take their children to Palani Temple. But it was not accepted by the deceased Manimegalai. Keeping this as motive, on 28/02/2015 at about 03.00 pm, at Thiruvallurvar Nagar, the deceased shouted of the accused stating as to how she could ask Nambirajan to take her children. At that time, the accused poured kerosene on the body of the deceased and set fire. The deceased sustained burn injuries all over the body. On 04/03/2015 at 07.10 am in the Government Hospital, Sankarankovil, she succumbed to burn injuries. Upon the occurrence, a complaint was lodged with the respondent police. Based upon that complaint, a case in Crime No.132 of 2015 was registered for the offences under sections 294(b) and 307 IPC @ 302 IPC. After investigation, final report was filed and it was taken on file in SC No.70 of 2016 by the Principal Sessions Judge, Tirunelveli. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-



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(i) The deceased Manimegalai was living at Thiruvalluvar Nagar, Sankarankovil. She married one Sankaranarayan and had two childrens by name Muthumari and Mupidathi; The deceased deserted her husband and living separately; At that time, she had contact with Nambirajan the husband of the accused; In the meantime, Nambirajan asked the accused to live with her 3 children at Thirupur Kumaran Nagar in Sankarankovil; The deceased and Nambirajan were living in Thiruvalluvar Nagar; On 28/02/2015 at about 03.00 pm, Nambirajan decided to visit Palani Temple with the deceased Manimegalai; At that time, the accused Ananthalakshmi also requested him to take their children to Palani Temple, but it was not accepted by the deceased Manimegalai; At that time, the accused poured kerosene on the body of the deceased and abused her in filthy language, thereby the accused committed an offence punishable under section 294(b) IPC; and

(ii) In the course of the above said occurrence, the accused poured kerosine on the body of the deceased and set fire; Due to it, on 04/03/2015 at 07.10 am in the Government Hospital, Sankarankovil, she succumbed to burn



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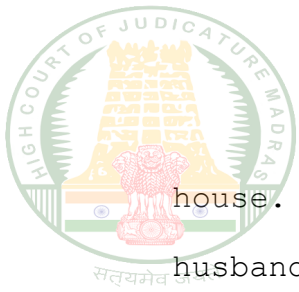
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injuries and thereby, the accused has committed an offence punishable under section 302 IPC.

3.To that, the accused pleaded not guilty and claimed to be tried.

4.On the side of the prosecution, 13 witnesses were examined and 16 documents marked. Apart from that, 3 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

5.**PW7** was working as Judicial Magistrate, Sankarankoil. On 28/02/2015 at about 05.50 pm, he received intimation from the Government Hospital, Sankarankoil to record the dying declaration of one Manimegalai. He went to the hospital immediately and the injured was identified by the Medical Officer called 'Karthikeyan'. He recorded the statement after ascertaining her mental and physical capacity to give statement. In the statement, the deceased stated that she married her husband two months prior to the occurrence. It is the second marriage. After the marriage, they were living in Thirupur separately. At that time, the Nambirajan, who is the husband of the accused asked them to come to the home so that they can live together. So, returned to Thirupur and were living in the very same

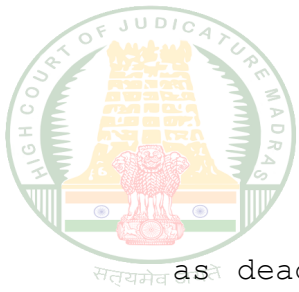


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house. The accused was owning house in Mullai Nagar. Her husband used to see her. In Thiruvalluvar Nagar, she was living with her in-laws and doing weaving work and her husband used to go there during night hours. On the date of the occurrence, they decided to go to the temple for tonsuring. At about 02.00 pm, the accused came to the house, picked up quarrel with Nambirajan. At that time, the deceased was busy in cocking. The accused picked up quarrel with her also. The accused asked her to go out of the house. That was objected by her. At that time, the accused poured kerosene on her and set fire, locked the door and went away. She also spread the news as if she herself set fire. The fire was doused by Nambirajan and taken to the hospital.

6.**PW13** was working as Medical Officer in Sankarankovil Government Hospital. On 28/02/2015 at about 03.25 pm, the deceased was admitted by Nambirajan, who is the husband of the accused. She told him that at 03.00 pm on the particular day, the accused set her on fire. On his examination, he found burn injuries on the left and right thigh region. At the time of admission, the deceased was in conscious state of mind. He admitted her as inpatient and registered the accident register. Later, the injured died.



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7. On 04/03/2015 at about 07.10 pm, she was declared as dead by **PW8** who was working as Medical Officer in the Government Hospital, Sankarankovil.

8. At the request made by the Investigating Officer, **PW10** conducted postmortem on the body of the deceased. At that time, he found the following injuries viz., (1) Burn on right and left front and back; (2) Burn on back of left hand; (3) Burn on right hand; (4) Burns in front and back of hip; and (5) Burns in front of stomach. He gave opinion that because of the burn injuries and suffocation, the death occurred.

9. **PW1** is the husband of the accused. According to him, because of the trouble between the deceased and her husband, she came to his house and committed suicide.

10. **PW2** is the neighbour. She heard that Manimegalai committed suicide.

11. **PW3** is another neighbour. He heard the occurrence that the deceased committed suicide.

12. **PW4** is another neighbour. She does not know anything about the occurrence, so also **PW5**.



13. Other witnesses are not the material witnesses.

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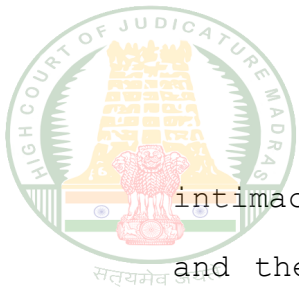
14. The accused was questioned under section 313(1) (b) of the Code of Criminal Procedure about the incriminating circumstances against her. She denied the evidence of the witnesses as false and stated that a false case has been foisted against her.

15. At the conclusion of the trial, the trial court found the accused guilty and convicted him for the offence under section 304(i) IPC and sentenced her to undergo 7 years RI and imposed a fine of Rs.1,000/-, in default to undergo 6 months RI.

16. Against which, this criminal appeal is preferred by the appellant.

17. Heard both sides.

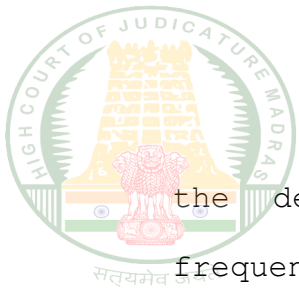
18. **The background facts:-** The deceased Manimegalai was married to one Sankaranarayanan. Because of the difference of opinion between them, Manimegalai was living separately. Later, she had contact with the husband of the accused by name Nambirajan, who was examined as PW1 and living with him. Nambirajan namely PW1 already married to the accused and had three childrens. Because of the illicit



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intimacy, there were frequent trouble between the accused and the deceased Manimegalai. On 28/02/2015 at about 03.00 pm, PW1 was getting ready to go to Palani Temple with Manimegalai. At that time, the accused came to that place and started asking him to take their childrens also. PW1 told that he will take her to Thiruchendur Temple after sometime. Because of that, quarrel arose between the deceased and the accused. Now, it is the case of the prosecution that over that issue, the accused poured kerosene and set fire on the deceased Manimegalai. It is the defence that the deceased Manimegalai committed suicide by pouring kerosene on her self and lodged a false complaint as if the accused is responsible for the death. So, this is the background facts.

19.The fact that the deceased Manimegalai died due to the burn injuries is not denied and disputed. In this regard, the prosecution has examined PW10 Medical Officer, who conducted postmortem. He opined that the death occurred due to suffocation caused burn injuries. Regarding the illicit intimacy between PW1-Nambirajan and the deceased Manimegalai, there is no big issue from the side of the accused. But by pointing out the evidence of PW9, they would say that Sankaranarayan, the husband of the deceased was doubting each and every one as if they are having affair with the deceased. PW1-Nambirajan has stated that

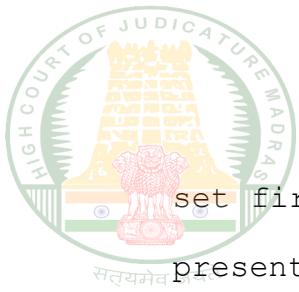


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the deceased Manimegalai used to come to his house frequently. Because of the issue between the husband and wife, she came to his house and committed suicide. But PW1's evidence is highly unbelievable in view of the fact found out by the Investigating Officer during the course of Investigation that there was illicit intimacy between the deceased and PW1. So, we can take that this fact was established on the side of the prosecution.

20.Because of the illicit intimacy, it appears that there were frequent trouble between the deceased and the accused herein. On the particular date of the occurrence, PW1 has an idea to go to Palani Temple. The deceased did not object to it. But the accused also. But wanted PW1 to take their children also. That was not liked by the deceased and she picked up quarrel with the accused.

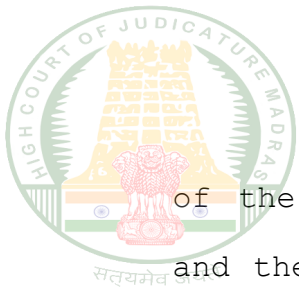
21.Stopping a moment here, now we will go to the evidence of PW11, who recorded the statement of the deceased. She would say that on 28/02/2015 at about 03.35 pm, she received an intimation from the Government Hospital, Sankarankovil regarding the admission of the deceased, recorded her statement and registered FIR. In the statement, she has stated that both picked up quarrel with each other regarding taking of the childrens to Palani. The accused took up kerosene can, poured kerosene on her and



set fire. At the time of her visit only, PW1-Nambirajan was present in the hospital. Now in that statement, she has admitted that she was married to Sankaranarayanan. Later, started living with PW1.

22.In this context, we will go to the evidence of PW13 Medical Officer, who admitted the deceased in the Sankarankovil Government Hospital. He would say that as per her statement, she sustained burn injuries because of the fire set by the accused. She was admitted by PW1-Nambirajan in the hospital. So, from the above said fact, it is seen that on both occasions namely before PW11 and PW13, she has stated that she was set fire by the accused.

23.Now we will go to the evidence of the Judicial Officer, who recorded the dying declaration of the deceased. He would say that on 28/02/2015 at about 03.30 pm, he received intimation from the Government Hospital, Sankarankovil to record the statement of Manimegalai. After satisfying the physical and mental capacity of the deceased, he started recording the statement as stated by her. The dying declaration was marked as Ex.P3. In the statement, it has been stated by her that the marriage between her and her husband took place some two months back. After the marriage, they were living in Thirupur Kumaran Nagar. At that time, the husband



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of the accused asked them to come to Thiruvalluvar Nagar and there living together. The accused is having house in Mullai Nagar. In Thiruvalluvar Nagar, they were doing weaving work and Nambirajan used to go to the accused house regularly. Only for doing weaving work, he used to go to Thiruvalluvar Nagar. On the date of occurrence, they decided to go to Palani. At that time, the accused came and picked up quarrel with Nambirajan. Later with her also. Now after that, she was set fire.

24. Based upon this dying declaration, the trial court has recorded a finding of guilt.

25. The learned Senior counsel appearing for the appellant would submit that even as per the evidence of the Medical Officer, who conducted postmortem, the deceased suffered only 40% of burn injuries; there was no anticipation of immediate death; The statement can be recorded as dying declaration only if the deceased, who was under anticipation of immediate death; There was no serious burn injuries on the vital parts of the body; As per the medical record, the death occurred due to suffocation. So, according to him, the statement under Ex.P3 could not be accepted as dying declaration. He would further submit that the injuries were not in the ordinary court of nature to cause death. So, according to him, in the quarrel which arose between two, the deceased in a spur of the moment,



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committed suicide, for which the appellant cannot be held criminally liable.

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26.It is further submitted by him that cause for the issue was not properly investigated. So, according to him, even the dying declaration does not inspire any confidence as it suffers from inherent inconsistency. Apart from that, there is no supporting evidence corroborating the dying declaration; The place of occurrence will indicate that the occurrence could not have taken place as stated in the dying declaration.

27.Per contra, the learned Government Advocate (Criminal Side) would submit that the motive was properly established by the prosecution; The illegal affair between the deceased and PW1 who is the husband of the accused was the reason for enmity; The trial court has appreciated the evidence on record in a proper manner and chose to treat the dying declaration as one under section 32 of the Indian Evidence Act. He would further submit that no reasonable doubt was created by the accused before the trial court and before this court also. So, no interference need be made.

28.Now we will straightaway go to the dying declaration, because there is no other corroborating evidence from the side of the prosecution. All the eye

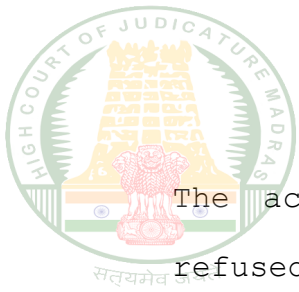


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witnesses alleged to have witnessed the occurrence turned hostile. Naturally PW1 the husband of the accused turned hostile. Actually, he is the main person responsible for the affair. He would say that because of the misunderstanding between Manimegalai namely the deceased and her husband, she used to come frequently to his house. Because of that issue only, she committed suicide in his place. But actually, this person was taking the deceased to the hospital and admitted. Since, he is responsible for the affair, he turned hostile.

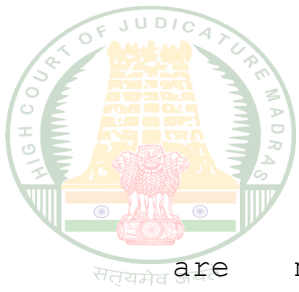
29. During preliminary enquiry by the Judicial Magistrate, the deceased has stated that her husband name is Nambirajan, who is PW1. In the main portion, he would say that she was married to PW1 two months back. After the marriage, they were living in Thirupur Kumaran Nagar. They were invited to the present village by the accused stating that they can live jointly. So, they were living as joint family in Thiruvalluvar Nagar. The accused is having the house in Mullai Nagar. In Thiruvalluvar Nagar, she along with the mother-in-law and father-in-law were doing weaving. PW1 used to go to the house of the accused daily for work and used to come to Thiruvalluvar Nagar. On the date of the occurrence, they decided to go to Palani. At about 02.00 pm, the accused came to the house started troubling with PW1. She was preparing food at that time.



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The accused started quarreling with her also. When she refused to go out of the house, the accused poured kerosene and set her on fire. By pushing her away, the accused went out of the house and locked. But informed others as if the deceased herself set on fire. Later PW1 came to the spot, took her to the hospital. So, this is the sum and substance of the dying declaration, which was recorded at about 06.30 pm.

30.Now the complaint:- It was recorded at about 03.45 pm, on 28/02/2015 by the Recording Officer. As mentioned above, in the complaint, she has stated that she was married to Sankaranarayanan and had two daughters. Because of the misunderstanding between them, they were separated. Later, she had contact with PW1 and living with him. PW1 was already married and got three childrens. So, because of that, there was frequent trouble between herself and the accused. So, PW1 took the accused and three childrens to Thirupur. Now she is living with PW1 at Thiruvalluvar Nagar. On the date of the occurrence, when she was getting ready to go to Palani, the accused came there, asked PW1 to take their childrens also to Palani. Over that, she picked up quarrel with the accused. There was frequent verbal quarrel between them on that occasion. The accused poured kerosene and set her on fire. She was taken to the hospital by PW1.

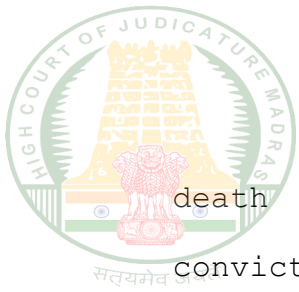


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31. Reading of these two statements shows that there are material contradictions. Before the Judicial Magistrate, she has told a different story about the affair with PW1. Not only that, she contradicted herself as to the place of residence. In the complaint, she has stated that the accused and her three childrens were living in Thiruvalluvar Nagar. But in the dying declaration, she has stated that she and PW1 were living in Tirupur Kumaran Nagar. Which one is correct is not known. So, we can see that there are material contradictions. But the fact remains that she has not told the truth regarding the affair.

32. **Now coming to the event:-** How this quarrel arose between them shows material contraction between the complaint and the dying declaration. In the statement, she has stated that she only picked up quarrel with the accused over taking of the accused children to Palani. But in the dying declaration, she has stated a contra fact. Which one is true, again is also not known because the material witness PW1 turned hostile. So, how the trouble started between them creates doubt.

33. The circumstance under which the trouble has arisen clearly shows that it is nothing, but sudden quarrel broke out in a spur of moment in the place of occurrence. There was no intention on the part of the accused to cause

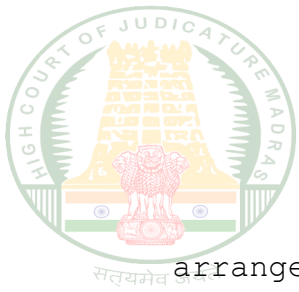


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death and that was the reason for the trial court to convict the accused under section 304(ii) IPC. So, the question which arises for consideration is whether the deceased is a genuine person, whose statement can be believed to record the conviction of guilt under section 304(ii) IPC. The reason for me to observe this, is in the dying declaration, she has stated that the accused after setting her on fire went out of the house by locking outside. But told neighbours that she committed suicide. Why she has stated like that assumes importance. Now in that statement, she has not stated anything like that namely locking of the door outside and telling neighbours blaming the deceased herself for the burning. This is nothing, but an improvement made by her before the Judicial Magistrate at the time of giving dying declaration. Only on that account, it was submitted by the learned Senior counsel for the appellant that it is a case of suicide and not a case of murder.

34.Now we will see whether any circumstance is available to create doubt as to see whether it is a case of murder or suicide.

35.PW2 is the neighbour living adjacent to the house where weaving work was done. She would say that she heard that the deceased committed suicide.

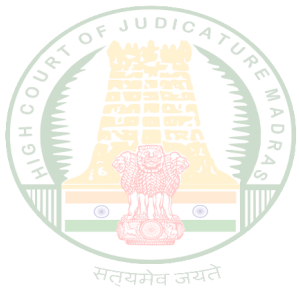


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36. According to the prosecution, she only made arrangement for shifting the deceased to the hospital through PW1. To the same effect, PW3 has given evidence.

She is also living in the neighbouring house. She was also told that the deceased committed suicide. According to the prosecution, she along with PW2 rescued the deceased and shifted to the hospital. The evidence of two neighbours creates some genuine doubt in the mind of this court as to the real happening. The possibility of suicide cannot be ruled out. But whether the accused has created circumstance driving the deceased to commit suicide is a matter to be considered.

37. The accused did not come to the occurrence place to create any trouble. A genuine request was made to PW1 to take her three children to the temple. But the deceased interfered and picked up quarrel. The deceased is not the legally wedded wife of PW1, whereas the accused is. The deceased herself unnecessarily created trouble, over which there were exchange of verbal quarrels between them. In a spur of the moment, it appears that the deceased poured kerosene and set her fire. Absolutely, there is no motive and intention on the part of the accused to cause any grievous hurt or murder.



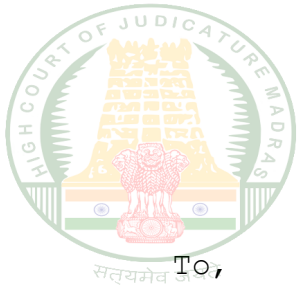
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38. Because of the inherent inconsistency in the statement of the deceased, I am of the considered view that it may not be appropriate or fair on the part of this court to render a finding of guilt solely based upon the uncorroborated dying declaration of the deceased. But the circumstance does indicate that it was not the circumstance created by the appellant, which drove the deceased to commit suicide. But the deceased herself has to be blamed for creating the circumstance resulting in her suicide, for which the appellant cannot be criminally held liable. So, the benefit of doubt is extended to the appellant. The judgment of conviction and sentence passed by the trial court are liable to be set aside.

39. In the result, this criminal appeal is **allowed**. The judgment of conviction and sentence passed by the trial court are set aside. The accused acquitted from the charge levelled against her. Fine amount if any paid by her shall be refunded to her. Bail bond if any executed by her shall stands discharged.

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To,

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- 1.The 1st Additional District and Sessions Judge,
Tirunelveli.
- 2.The Inspector of Police,
Sankarankovil Town Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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