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CrI.A(MD)No.419 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

|               |            |
|---------------|------------|
| Reserved on   | 22.09.2025 |
| Pronounced on | 25.10.2025 |

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CrI.A(MD)No.419 of 2022

and

CrI.M.P(MD) No.4933 of 2025

Raju : Appellant/Sole Accused

Vs.

The State Rep. By its

The Inspector of Police,

Kulithalai Police Station,

Karur District

: Respondent/Complainant

Prayer:-This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records in S.C.No.21 of 2019 on the file of the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, Karur District dated 28.12.2021 and acquit the appellant of the charges levelled against him.

For Appellant : Mr.T.Lajapathi Roy, Senior Counsel  
for Mr. C.Karthikeyan

For Respondent : Mr.B.Nambi Selvan  
Additional Public Prosecutor



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Crl.A(MD)No.419 of 2022



## J U D G M E N T

### **P.VELMURUGAN, J.,**

This Criminal Appeal is filed against the judgment of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Mahila Court, Karur, Karur District, in S.C.No.21 of 2019, dated 28.12.2021.

2. By the above judgment, the trial Court convicted the appellant and sentenced him, as detailed below:

| Penal Provisions | Sentence of Imprisonment | Fine Amount                                             |
|------------------|--------------------------|---------------------------------------------------------|
| 302 of IPC       | Life Imprisonment        | Rs.1000/- i/d to undergo six months simple imprisonment |

3.The case of the prosecution in brief:-

3.1. The deceased is the elder daughter of the defacto complainant. The accused is the brother-in-law of the defacto complainant. The mother of the deceased died prior to nine years from the date of occurrence and therefore, the deceased and her younger sister were groomed up at the house of the accused at Kakkathoppu in the Dindigul District. The deceased Nandhini worked in a Mill near Kakkathoppu and she had fallen in love with one



Ramesh. The appellant did not like the love affair of the deceased with the said Ramesh and warned the deceased, but the deceased Nandhini did not listen the voice of the accused. However, the deceased obtained consent from his father to marry the aforesaid Ramesh and therefore, the accused got angry with her. In the meantime, there was a festival at Ganesapuram and on the invitation made by the accused, the defacto complainant and the younger sister of the deceased came to Ganesapuram on 12.06.2018 to participate in the festival. During the said period, on the request made by the deceased, the defacto complainant asked Ramesh to come to Ganesapuram to see the bride, but the accused did not like the marriage proposal between the deceased and said Ramesh. The accused got irritated and decided to take away the life of the deceased, hence, on 13.06.2018 in the early hours, the appellant bought petrol at a shop in his village with an intention of causing the death of the deceased and waited for an opportunity. On the same day at about 6.00 a.m., while the deceased came to Saravanan's field for answering her natural call, at that time, the accused pulled down the deceased and poured petrol on her and set ablaze and as a result of which, the deceased died due to burn injuries on 14.06.2018. Thereafter, the respondent police registered a case in Crime No.297 of 2018 under Section 307 of IPC and subsequently, altered to Section 302 of IPC



3.2 After completion of investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate No.II, Kulithalai and the same was taken on file as PRC No.8 of 2018.

3.3 On 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 and the case was taken on file in S.C.No.21 of 2019 and made over to the Additional Sessions Judge, Fast Track Mahila Court, Karur District, for trial under Section 209(A) of Cr.P.C.,. The trial Court framed charge against the appellant for the offence punishable under Section 302 of IPC.

3.3 In order to substantiate the case of the prosecution, the prosecution has examined 25 witnesses as P.W.1 to P.W.25 and 24 exhibits were marked as Ex.P.1 to Ex.P.24 and 7 material objects were exhibited as M.O.1 to M.O.7.

3.4. After examination of prosecution witnesses, when the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he 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 either side, by judgment, dated 28.12.2021, convicted the appellant and sentenced him as detailed in Paragraph No.2 supra. Challenging the above said conviction and sentence, the appellant has filed the present appeal.

5. The learned Senior Counsel appearing for the appellant would submit that there are lot of discrepancies in the evidence of prosecution witness. He would further submit that though P.W.3 is cited as child witness, the other witnesses have not stated anything about the presence of P.W.3 at the time of occurrence. He would further submit that evidence of P.W.3/child witness is unworthy of credit. The presence of the child witness, who has been projected as an eye witness is not spoken to by the other witnesses viz., P.W.1,2,4 to 6 who were present in the scene of occurrence. P.W.3 happened to be a chance witness and he was examined by the Investigating Officer belatedly and there is no explanation for the said delay, therefore, the testimony of P.W.3 is not reliable.



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5.1. The other incriminating material against the appellant is Ex.P.9/dying declaration. The alleged dying declaration do not disclose any motive. Further the said dying declaration is surrounded by suspicious circumstances. The failure on the part of the prosecution to examine the Doctor, who was present at the time of recording dying declaration as well as the trial throws much doubt upon Ex.P.9. Further the time gap in recording the dying declaration and not the presence of the other witnesses at the time of recording the dying declaration throws much doubt upon the same. Further the alleged dying declaration is silent as regards the presence of eye witnesses. The testimony of the prosecution witnesses is full of contradictions and improvements.

5.2.The alleged material object used to put off fire, according to the prosecution is a gunny bag, rather P.W.1 would say that is a bed sheet. Further the evidence of the occurrence witnesses, who had seen the injured being carried out, do not speak about the nature of injuries. The material part of the investigation is full of suspicion and the same casts much doubt upon the prosecution case. The delay in the statement reaching the Court and the failure on the part of the prosecution to seize the relevant materials throws much doubt on the



prosecution case. The Investigating Officer failed to collect scientific evidence which would throw much light upon the prosecution case. The failure and lapses in the investigation would require an adverse inference as against the prosecution version.

5.3. He would further submit that there are lot of discrepancies in the evidence of prosecution. Further P.W.1 is the defacto complainant who deposed that he has put off fire by using bed sheet, but only M.O.3 burnt gunny bags were recovered by P.W.22 during the course of the investigation and therefore, the non seizure of the bed sheet, which is used to put off fire is fatal to the case of prosecution. Further P.W.2 to 6 would say in their evidence that gunny bags were used to put off fire. There are a lot of discrepancies between the statements recorded by the police under Section 161 of Cr.P.C., and the statements recorded by the Judicial Magistrate under Section 164 of Cr.pC., and also there are a lot of exaggerations in the deposition of the prosecution witnesses. He would further submit that the appellant also sustained injuries and he was admitted in the hospital and he took treatment for three days from 13.06.2018 to 16.06.2018 at Kulithalai and therefore, there is no possibility that the accused went out of the hospital while he was admitted as inpatient in the Government Hospital and therefore, the recovery by the



Investigating Officer is impossible and that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the benefit of doubt may be extended to the appellant and the appeal is liable to be allowed and the appellant is to be acquitted.

6. The learned Additional Public Prosecutor would submit that it is not a case of circumstantial evidence, therefore, motive is not a pre-condition. P.W.3 is the child witnesses, who is the eye witness to the occurrence has clearly spoken about the occurrence. The statement of P.W.3 was recorded by the learned Judicial Magistrate under Section 164 of Cr.P.C. clearly shows that the appellant is the person who set fire on the deceased and the other witnesses namely P.W.1. P.W.2, P.W.4 to P.W.6 came to the place only after the occurrence and they tried to put off fire, when the deceased was with burn injuries and they stated that the appellant is said to have set fire on her, since she did not listen the words of the appellant and he poured kerosene and she was admitted in the hospital and she also informed the Doctor. Further, the dying declaration was recorded by Magistrate in the presence of the Doctor. The Doctor also certified that the deceased was in fit state of mind and thereafter, recorded the statement. The Doctor who examined the deceased has certified that the deceased sustained 40% burn injuries. Further the Doctor has also



stated that the deceased sustained 50% burn injuries. Since both the hands of the deceased sustained burn injuries, she was not in a position to sign the dying declaration. Therefore, they obtained impression using her toe. Though P.W.1 to P.W.6 soon-after the occurrence, rushed to the spot, whether they secured the injured and put off fire with gunny bags. Further, P.W.2 and P.W.4 have clearly stated that they put off fire using gunny bags and the mere discrepancies will not be fatal to the case of prosecution. The deceased fell in love with one Ramesh and she informed the same to the parent. P.W.1 also accepted for their marriage, but however the appellant who is the paternal Uncle of the deceased did not accept the same, since the mother of deceased is no more and therefore, she was brought up by the appellant and the appellant did not like the marriage proposal and thereby, he set fire on the deceased. Therefore, in this case, motive is established by the prosecution, even otherwise in the presence of eye witness, motive is not a pre-condition. However, the prosecution has established the case through oral and documentary evidence and also through the dying declaration given by the deceased while she was taking treatment in the hospital and subsequently she succumbed with burn injuries. Originally, the case was registered under Section 307 of IPC and subsequently, after the death of the deceased, the case was altered to Section 302 of IPC.



Further, the appellant also sustained burn injuries, while setting fire on the deceased. Admittedly, the appellant was admitted in the hospital and the medical evidence also corroborated the same and therefore, the prosecution has proved the case beyond reasonable doubt. The grounds taken by the appellant are not fatal to the case of prosecution. Further, the contradictions and discrepancies pointed out by the learned Senior Counsel appearing for the appellant are not material contradictions and is not fatal to the case of prosecution and it will go to the route of the case of prosecution. Though there are contradictions and discrepancies and also some flaw in the investigation, it is not a ground for acquittal. Mere defective investigation is not a sole ground for acquittal and therefore, the trial Court has rightly appreciated the oral and documentary evidence and convicted the appellant and thereby, there is no merit in the appeal and the same is liable to be dismissed.

7. We have considered the submissions of the learned Senior counsel for the appellant and the learned Additional Public Prosecutor for the State and have consciously gone through the evidence and materials on record.



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8. The case of the prosecution is that the deceased is the elder daughter of the defacto complainant. The appellant is the brother-in-law of the defacto complainant. The mother of the deceased died nine years prior to the occurrence. Therefore, the deceased and her elder sister were brought up by the appellant to his house. The deceased was working in a Mill at Kakkathoppu and she fell in love with one Ramesh. The appellant did not like the love affair of the deceased with Ramesh and warned the deceased, but the deceased did not listen to the words of the appellant. Therefore, the appellant got animosity with the deceased and during relevant time, there was a festival at Ganesapuram and on the invitation made by the appellant, the defacto complainant and the deceased came to Ganesapuram on 12.06.2018 and also participated in the festival. During such time, at the request of the deceased, the defacto complainant asked the said Ramesh to come to Ganesapuram to see the bride, but the appellant did not like the marriage proposal between the deceased and the said Ramesh and thereby he decided to take away the life of the deceased, therefore, on 13.06.2018 at early hours the appellant brought petrol at the shop in his village and poured the petrol on the deceased and set fire with an intention to cause death and therefore, the deceased died on 14.06.2018 due to the effect of burn injuries.



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9. In order to substantiate the case of prosecution, the prosecution has examined 25 witnesses, out of which the defacto complainant was examined as P.W.1. P.W.1 father of the deceased in his evidence has clearly stated that the deceased is his elder daughter and after completion of school education, she lived in the residence of her maternal aunt namely Saritha at Dindigul. The appellant is none other than the husband of the maternal aunt of the deceased. The deceased stayed in the house of the appellant at Dindigul and working in a nearby Mill at Kakkathoppu . The deceased fell in love with one Ramesh, who belonged to Vellamaruthupatti and P.W.1 also consented for marriage of their daughter with Ramesh, but the appellant did not like the marriage proposal and got animosity. Therefore, on 13.06.2018 at about 6.00 hrs, the deceased went to Saravanan's field for attending natural call, after some time, he heard the screaming of his daughter and he immediately went to the place of occurrence and she saw his daughter screaming in half burnt condition. He further deposed that immediately Ramakrishnan, Pitchai and Vijaya who were nearby the residents also came to the place and wrapped the deceased with gunny bag to put off fire. At that time, when he enquired his daughter, her daughter informed that the appellant did not like the marriage proposal between her and the said Ramesh. The



appellant forced the deceased to marry a person according to his wish and stating so, he pulled the deceased and set ablaze. Thereafter the injured was taken to Kulithalai Government Hospital for treatment and from there, she was referred to Trichy Government Hospital for further treatment, where the Kulithalai police came, examined the injured and recorded her statement.

10. The statement was also read over and he has signed in the said statement. Subsequently P.W1 was produced before the Judicial Magistrate for recording statement under Section 164 of Cr.P.C. and he also reiterated the same.

11. P.W.2 Vijaya is the paternal aunt of the deceased. She also corroborated the evidence of P.W.1. One minor Abinandhu was examined as P.W.3 and in his evidence he has stated at on 13.06.2018 at about 6.00 hrs, the deceased came to Saravanan's field for answering her natural call and when he was returning from saravanan's field, he saw the deceased talking with the appellant in the field of Saravanan. At that time, the appellant also asked the deceased as to why she was not listening to the words and by stating so, the appellant pulled the deceased and poured kerosene over the deceased and set ablaze. He witnessed the occurrence directly. On



hearing the screaming sound of the deceased in half burnt condition, the persons who were nearby came to the place of occurrence and wrapped the deceased with gunny bag to put off fire. Since he got afraid after witnessing the incident, he ran away to his house from the place. Thereafter he heard about the death of the deceased in the hospital. Few days later, he went to Kulithalai where his statement was recorded by the learned Judicial Magistrate under Section 164 of Cr.P.C.,

12.The main contention raised by the learned Senior Counsel is that according to the prosecution, P.W.3 is the eye witness to the occurrence, whereas other witnesses namely P.W.1, P.W.2, P.W.4 to P.W.6 came to the spot soon-after the occurrence and they put off the fire, but they have not spoken about presence of P.W.3. The statement of P.W.3 was recorded belatedly and therefore, the presence of P.W.3 is highly doubtful and untrustworthy. However, a reading of evidence of P.W.1, the motive of the appellant to take away the life of the deceased was proved. P.W.1, P.W.2, P.W.4 to P.W.6 have also corroborated the evidence of P.W.1. Though, there is much discrepancies, the fact remains that the deceased sustained burnt injuries between 40-50% and she was initially taken to Kulithalai Government Hospital and subsequently, referred to Trichy Government



Hospital and the Doctor, who also recorded the entries in the accident register had clearly shown that the appellant is the one, who caused injuries to the deceased, due to which the deceased sustained injuries and subsequently, she died. While so during treatment, dying declaration was recorded by the Judicial Magistrate in the presence of the Doctor. Though the evidence of P.W.3 was recorded much belatedly, the evidence of other witnesses namely P.W.1, P.W.2, P.W.4 to P.W.6 clearly shows that the deceased sustained burn injuries in the field of Saravanan and the evidence of P.W.1 clearly shows that at about 6.00 am., she went to answer natural call, it is not a far away place. Therefore, the presence of P.W.3 is not doubtful. Mere delay in recording the statement of P.W.3 may not be a sole ground to discard the evidence of P.W.3 and the reason for recording the statement belatedly also rightly explained that since P.W.3 is minor who is the child witness. The child who saw the occurrence like the person setting fire on the girl would naturally get afraid and did not disclose the incident.

13.The next ground of attack made by the learned Senior Counsel is about the non examination of the Doctor who had certified about fit state of mind. He also further submitted that mere fitness certificate is alone not enough.



14.A reading of evidence of Judicial Magistrate who recorded dying declaration was examined as P.W.12. He has clearly spoken about the recording of statement after ascertaining the mental status of the deceased and the Doctor who also gave certificate and thereafter, he recorded the statement of the deceased and ascertained that the deceased was in fit state of mind throughout. Further witnesses P.W.1 to P.W.3 were also produced before the learned Judicial Magistrate and their statements were also recorded. Therefore, the statement recorded by the Magistrate cannot be thrown away that there is insignificance in the statement recorded by the Magistrate. Though the statement recorded from the appellant is not admissible in evidence under Section 162 of Cr.P.C., however the statement recorded by the Magistrate is admissible in evidence. Therefore, the evidence of P.W.1 to P.W.3 corroborated with each other and prosecution has proved the case beyond reasonable doubt.

15.A reading of the materials and the oral and documentary evidence adduced, this court being the appellate court, the final fact-finding court has to re-appreciate the entire evidence independently and give an independent finding. The evidence of the prosecution witnesses P.W.1 to P.W.3 are clear, cogent and consistent and there is no reason to discard the evidence of P.W.1 to P.W.3.



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16. Further, a reading of evidence P.W.12 to P.W.17 also clear. Though P.W.1, P.W.4 to P.W.6 are hearsay witnesses, but they have clearly spoken that they heard the incident from the injured directly and their evidence is cogent and also consistent. Though, the appellant gave a voluntary confession statement, the statement recorded by the Police officer is not admissible evidence. But at the same time, the confession is admissible for limited purpose.

17. A reading of the recovery under Section 27 of the Indian Evidence Act, even otherwise when there is no eye witness and in respect of confession leading to recovery of materials, once the evidence of the eye witnesses inspire confidence of the Court, the Court can record conviction. In this case, admittedly there is an eye witness to the occurrence.

18. Taking into consideration of all the facts and circumstances of the case, the trial Court has rightly appreciated the oral and documentary evidence and recorded a conviction and this Court does not find any perversity or illegality in the appreciation of the evidence. Therefore, this Court finds no reason to interfere with



the judgment of the trial Court and thereby, this appeal has no merit and deserves to be dismissed.

19.In the result, this Criminal Appeal stands dismissed confirming the judgment of the trial Court. Consequently connected miscellaneous petition stands closed.

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

25.10.2025

Index : Yes/No  
Internet : Yes/No  
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To:

- 1.The Additional Sessions Judge,  
Fast Track Mahila Court, Karur, Karur District
- 2.The Inspector of Police,  
Kulithalai Police Station,Karur 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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and  
L.VICTORIA GOWRI,J.

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