

BAIL

The Appellant/Accused Namely Murugan, male aged 38, S/o.Durai, was released on bail as per order of this court dated 10.10.2007 in Crl.M.P.NO.1/2007 in Crl.A.No.925 of 2007 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.03.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL NO.925 OF 2007

Murugan ... Appellant/Accused

/versus/

State rep.by the Inspector of Police,  
Maduravoyal Police Station,  
(Crime No.1336 of 2004) ... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the conviction and sentence imposed upon him by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Poonamallee in S.C.No.40 of 2007 dated 20.09.2007 for the offence under Section 304( Part II) two counts and sentenced to undergo three years RI and no fine imposed and sentence to run concurrently.

For Appellant :Mr.L.Mahendran

For Respondent :Mr.Harihara Aruna Soma Sankar  
Government Advocate(crl.side)

JUDGMENT

The appellant herein was charged for the offence under Section 302 of IPC (2 counts), since he poured kerosene on one Muniamma and Krishnaveni, who were sleeping in their house on 12.12.2004 at about 12.45 night.

2. According to the prosecution, Mohan borrowed jewels from the accused and pledged the same to raise funds to meet out his sister's marriage. Since he did not redeem the jewel, there

was a dispute between Mohan family and the accused. While so on 12.12.2004 at about 12.45 p.m., in the night when Muniammal, Dakshinamurthy and Krishnaveni were sleeping in their house, the accused poured kerosene and set fire on them. In the said act, Krishnaveni and Muniammal succumbed to burn injury. Based on the complaint of Muniammal, police has registered First Information Report on 13.12.2004 at about 06.30 a.m. PW.9[Tr.M.Sundaresan], Sub Inspector of Police, Maduravoil, who was on duty at that time, has taken up the investigation, gone to the place of occurrence, recorded the statement of witnesses Dakshinamurthy (PW-1) , Nagavalli(PW-3) and Vadivel(PW-4) and recovered melted plastic can, petrol mixed mud and sample mud. From the evidence of witnesses, the prosecution was able to establish the fact that the accused was living opposite to the house of the victim. On the day of event, the accused fully drunk causing ruckus in front of their house since Mohan brother of Dhakshinamoorthy has borrowed a gold chain from the accused and pledged and did not redeem it. Therefore, there was a wordy quarrel between the accused and Mohan. On that night, Dhakshinamoorthy (PW-1), Krishnaveni(deceased), Muniammal(deceased), Nagavalli [PW.3] and others were sleeping in their house. PW.3[Nagavalli] felt something cold falling on her. When she woke up, she saw the accused pouring something. She also witnessed Muniammal and Krishnaveni were burning in front of her. Vadivel tried to drowse the fire but he failed. The injured persons were taken to Hospital. Later, both Krishnaveni and Muniammal succumbed to burn injury. The post-mortem report of the Doctor and dying declaration of the victims had established the guilt of the accused beyond reasonable doubt.

3. The trial Court, therefore held him guilty for offence under Section 304 (ii) of IPC(2 counts). Taking into consideration that at the time of committing the crime the accused was not in normal sense but he was inebriated mood and having held so, the trial Court has sentenced the accused to undergo three years Rigorous Imprisonment for the offence under Section 304(ii) of IPC(2 counts). Aggrieved by the judgment of conviction and sentence passed by the trial Court, the present Criminal Appeal is filed.

4. While the learned counsel appearing for the appellant would submit that having held that the accused was not in his sense, the Court below ought not to have held that he had the knowledge that his act likely to cause death. Therefore, when the ingredients of Section 304 IPC is not attracted, the Court ought to have acquitted the accused under exemption clause.

5. Contrarily, the learned Government Advocate (crl.side) would submit that it is a grave double murder committed by the accused. It was committed knowing fully well

that it will likely to cause death. Infact, out of four persons in the house, two have succumbed to the injury. Therefore, it is a fit case where the punishment has to be enhanced. Though the State has taken a decision to file an appeal for enhancement of sentence, due to administrative reason, the State could not get it number.

6. Heard both sides and perused records.

7. The criminal law has been set into motion pursuant to the complaint given by one Muniammal, who was one of the injured and later died. Duet to the injuries, the complainant later died. The records indicates that the statement of the defacto complainant was recorded in the hospital when she was in Burn Ward of KMC Hospital. The First Information Report clearly indicates the manner in which the accused has set fire, which was witnessed by the other injured persons as well as PW-3, who was sleeping along with them. In addition, the police has recorded the dying declaration of Krishnaveni and Muniammal, which have been marked as Exs.P22 and P23. There were other witnesses who saw the injured persons crying out of burn and the accused running from the scene of occurrence. Their evidence fall under the res gesta evidence, which is relevant and admissible. Therefore, considering the occular witness of PW-3 coupled with the dying declarations, the Court below has rightly held the accused guilty though not for 302 IPC but for 304 (ii) IPC (2 counts). The trial Court has given its reasoning for considering the case under Section 304 (ii) IPC. A view, which is also plausible and not against law and facts. Therefore, the view of the Court below cannot be construed as perverse and illegal. The sentence imposed appears to be reasonable and requires no modification. Hence, this Criminal Appeal is liable to be dismissed.

8. Accordingly, this Criminal Appeal is dismissed. The judgment of conviction and sentence passed by the trial Court in C.A.No. 40 of 2007 dated 20.09.2007 is confirmed. The Bail bond, if any executed by the accused shall be cancelled. The sentence is ordered to run concurrently. The period sentence already undergone by the accused shall be given set off. The respondent police is directed to secure the accused and commit him into prison to undergo the remaining period of sentence imposed by the trial Court.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,  
Fast Track Court No.IV, Poonamallee.
2. The Inspector of Police,  
Maduravoyal Police Station.
3. The Judicial Magistrate No.II,  
Poonamallee.
4. The Chief Judicial Magistrate,  
Thiruvallur.
5. The Public Proecutor,  
High Court, Madras.

+lcc to Mr.L.Mahendran, Advocate, S.R.No.31126

Cr1.A.No.925 of 2007

SR(CO)  
CS/13/05/2019



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