



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.01.2023

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl. A(MD)No.283 of 2020

Rajeshwari : Appellant/Sole Accused

Vs.

State rep by
The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
(Crime No.286 of 2012) : Respondent/Complaint

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 04.12.2019 in S.C.No. 338/2016 on the file of the learned Mahila Court (Fast Track Court), Thoothukudi.

For Appellant : MrR.Manickaraj,
for Mr.M.Jegadeesh Pandian
For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was delivered by **P.N.PRAKASH, J.**)

This Criminal Appeal is filed against the judgment and order dated 04.12.2019 in S.C.No.338/2016 on the file of the learned Mahila Court (Fast Track Court), Thoothukudi.

2.The prosecution story runs thus:

2.1. The deceased Mariselvi was 13 years old at the time of incident and was not good in studies. Her parents (the appellant and Gopal-P.W.1) exerted her studies, but in vein. On 03.06.2012, they admitted her in Government Aided Residential School in Koviplatti, to pursue her studies. However, since she was least interested in studies, she returned home on 11.06.2012 in the midnight on having escaped from the hostel without informing the Warden. On 12.06.2012, the appellant chided her for running away from the hostel and not pursuing her studies. This appeared to trigger a quarrel between the appellant and her daughter in which, the appellant is alleged to have angrily thrown kerosene on the daughter and lighted. This



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took place around 7.00 a.m., on 12.06.2012. At this time, P.W.1 was fast asleep. On hearing the deceased hollering, P.W.1 woke up and immediately carried Mariselvi to the Government Hospital, Kovilpatti, where she was admitted as inpatient. The Wound Certificate (Ex.P.8) shows that she has suffered 50% burns.

2.2. On information to the police, Latha (P.W.13) Sub-Inspector of Police, Kovilpatti West Police Station, went to the hospital and recorded the statement of Mariselvi and the same has been marked as Ex.P.1. Based on the said statement, P.W.13 registered a case in Kovilpatti West Police Station in Crime No.286 of 2012, on 12.06.2012 at 11.15 hours, under Section 307 IPC against the appellant and the said FIR was received by the jurisdictional Magistrate at 10.30 a.m., on 13.06.2012 as could be seen from the endorsement thereon. Investigation of the case was taken over by Selvaraj, P.W.1.4, Inspector of Police.

2.3. The dying declaration (Ex.P.15) was recorded by the jurisdictional Magistrate No.II, Kovilpatti on 12.06.2012 between 11.50 a.m



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WEB COPY and 12.10 p.m. and the same has been marked as Ex.P.15. Dr.Sreekumar (P.W.8), who was treating Mariselvi has certified that Mariselvi was conscious and fit state of mind to give a statement. Based on that, the learned Judicial Magistrate No.II, Kovilpatti, recorded the statements (Ex.P.9 and Ex.P.15). Of course, we find in the dying declaration itself the certificate of Dr.Sreekumar P.W.8 to the effect that Mariselvi was conscious and she was in fit state of mind. The appellant was arrested by the police on 14.06.2012 and was remanded to custody.

2.4. Mariselvi was given medical treatment for over four months. Mariselvi was discharged from the hospital on 10.07.2012 and on account of burns not healing, she was readmitted in the hospital on 25.07.2012. Thereafter, she was discharged from the hospital on 27.08.2012. Again on 04.09.2012, she was admitted in the hospital, but she unfortunately succumbed to the injuries on 01.10.2012 at 22.40 hours. Pursuant to the above, the case was altered from one under Section 307 IPC to Section 302 IPC vide alteration report [Ex.P.18]. Selvaraj [P.W.14], conducted inquest over the body of the deceased and inquest report was marked as Ex.P.19.



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Dr.Mari Raj, performed autopsy on the body of Mariselvi and issued the postmortem certificate [Ex.P-10]. Dr.Mari Raj, in the postmortem certificate has stated that the patient was infected partially healing scalps/burns over the body.

2.5. After examining various witnesses and collecting the report of the experts, the investigating officer completed the investigation and filed a final report in P.R.C.No.29 of 2013 in the Court of the Judicial Magistrate No.II, Kovilpatti, for the offence under Section 302 IPC against the appellant.

2.6. On appearance of the appellant/accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Thoothukudi, in S.C.No.338 of 2016 and was made over to the Mahila Court (FTC) Sessions Level, Thoothukudi, for trial. The trial Court framed charges under Section 302 IPC against the appellant/accused and when questioned, the appellant pleaded “not guilty”.



WEB COPY 2.7. To prove the case, the prosecution examined 14 witnesses and marked 24 exhibits and 5 material objects. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, she did not offer any explanation. No witness was examined from the side of the appellant. Ex.D.1 was marked from the side of the appellant to show that the deceased was studying 6th Standard in the said school. After considering the evidence on record and hearing either side, the trial Court, by judgment and order, dated 04.12.2019 in S.C.No.338 of 2016, convicted the appellant for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and pay a fine of Rs.5,000/- and in default to undergo 6 months rigorous imprisonment. Aggrieved by the same, the present appeal has been filed.

3. The prosecution has proved the following facts beyond a peradventure:

- (a) The appellant and P.W.1 are the parents of the deceased Mariselvi;
- (b) Mariselvi was 13 years old at the time of incident;
- (c) Mariselvi suffered burn injuries; and



WEB COPY (d) Mariselvi died on 01.10.2012.

4. The short question is whether the appellant was responsible for the burn injuries suffered by Mariselvi?

5. We have two dying declarations in this case viz., the complaint (Ex.P.1) that was given by Mariselvi to the Sub-Inspector of Police, P.W.13 and the one given by her to the learned Judicial Magistrate No.II, Kovilpatti, (Ex.P.9 and Ex.P.15). In both the dying declarations, she has stated that since she was not properly studying, her mother was angry with her and when she returned home from hostel, her mother questioned her and thereafter, poured kerosene and set fire. But however, the question is whether the appellant had intention to commit the murder of her daughter.

6. The evidence of P.W.1 shows that the deceased was not interested in studying and had left the residential school on the night of 11.06.2012 without informing anyone and had come home in the midnight. On the next day, the appellant being the mother of the deceased was very upset that her



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daughter was not going to school. Therefore, a quarrel appears to have enured between the appellant and the deceased in which, the appellant is said to have thrown kerosene on her and set fire. It may be relevant to state that initially, the case was registered for the offence under Section 307 IPC and only after four months, when Mariselvi succumbed to injuries, the case was altered to one under Section 302 IPC. Records show that Mariselvi who received the burn injuries got admitted in the hospital on 12.06.2012 and was discharged from the hospital. On 10.07.2012 again, she was admitted on 25.07.2012 and discharged on 27.08.2012 for over three times as stated by us above was in and out of the hospital and finally got admitted on 04.09.2012. She finally succumbed to injuries in the hospital only on 01.10.2012.

7. Taking all these facts into consideration, we afraid that we cannot sustain the conviction of the appellant for the offence under Section 302 IPC and instead, the conviction can be one under Section 304(1) IPC.



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WEB COPY 8. In the result, this Criminal Appeal is partly allowed. The conviction and sentence of the appellant for the offence under Section 302 IPC is set aside. The appellant is convicted for the offence under Section 304(1) IPC and sentenced to undergo 10 years rigorous imprisonment and pay a fine of Rs.5,000/- in default to undergo 6 months rigorous imprisonment. The fine amount already paid for the conviction and sentence under Section 302 IPC would hold good for this too. The appellant is directed to immediately secure the appellant and produce her before the trial Court and on such production, she shall be remanded to custody for undergoing the remaining part of sentence after set off under Section 428 Cr.P.C.

[P.N.P., J.] [G.J., J.]
06.01.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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P.N.PRAKASH, J

AND

DR.G.JAYACHANDRAN, J

To

- 1.The Mahila Court
(Fast Track Court),
Thoothukudi.
- 2.The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.

Judgment made in

Crl.A.(MD)No.283 of 2020

06.01.2023

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