

Crl.A.(MD)No.204 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 09.12.2024

Pronounced On : 24.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A.(MD)No.204 of 2021

Vendaraja

... Appellant / Sole Accused

Vs.

The State rep. By
The Inspector of Police,
Alangulam Police Station,
Virudhunagar District.
(In Crime No.206/2015)

... Respondent / Sole Accused

PRAYER: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to call for the records and to allow this appeal and acquit the appellant from all the charges by setting aside the impugned Judgment passed by the learned Fast Track Mahila Court, Virudhunagar District, Srivilliputhur in Sessions Case No.73 of 2016 dated 18.12.2021.

For Appellant : Mr.M.Sankar

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

This appeal is directed against the Judgment dated 18.12.2021 made in S.C.No.73 of 2016 on the file of the Fast Track Mahila Court, Virudhunagar District, Srivilliputhur. By the impugned Judgment, the appellant was found guilty of the offences under Sections 302 of IPC & 498 A of IPC. The sentence particulars are as follows:-

Section	Conviction and Sentence
302 IPC	Life Imprisonment & pay a fine of Rs.5,000/-, in default to undergo 6 months Simple Imprisonment
498-A IPC	3 years Rigorous Imprisonment and pay a fine of Rs.1,000/- in default to undergo 1 month Simple Imprisonment

2. The case of the prosecution is as follows:-

Kaleeswari/deceased was the wife of the appellant / accused. According to the defacto complainant/father of the deceased, the accused would often quarrel with the deceased for some reason or the other. He is said to have suspected her fidelity. Three months prior to the occurrence, the gold chain weighing four sovereigns went missing.

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The accused suspected that the deceased had given the chain to someone.

He is even said to have assaulted her. On 25.08.2015, the child born to the accused and the deceased died. The accused once again suspected that the deceased was the cause for the child's death. On 22.09.2015 at around 2:00 pm, the accused assaulted the deceased, tied her legs with a cord, poured kerosene on her, set fire to her and caused her death. P.W.1 lodged Ex.P1-complaint before the Alangulam Police Station at around 18:30 hours. Based on the same, Crime No.206 of 2015 was registered for the offence under Section 302 of IPC. P.W.18 then working as Circle Inspector took up the investigation. He went to the spot at about 19:30 hours. He prepared observation mahazer and rough sketch. He also collected the burnt ash and also the cord tied around the legs of the deceased in a burnt condition and few other articles from the spot. He examined the witnesses and recorded their statements. On 23.09.2015, he arranged inquest to be conducted. Ex-P11 is the inquest report. Postmortem was conducted at 11:00 am on 23.09.2015. The accused was arrested on 29.09.2015 at 7:45 am. His confession statement was recorded in the presence of the witnesses. Based on the disclosure statement, M.O.4-Key was seized. After examining the medical

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witnesses, the final report was filed before the Judicial Magistrate No.2, Sattur. It was taken on file in P.R.C.No.2 of 2016. The case was committed to the Principal Sessions Court, Srivilliputhur and made over to the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in S.C.No.73 of 2016. Charges were framed against the accused for the offences under Sections 302 of IPC, 506(i) of IPC & 498(A) of IPC. The accused denied the charges and claimed to be tried. The prosecution examined P.W.1 to P.W.18 and marked Ex.P1 to Ex.P14. The accused examined himself as D.W.1 and one Balasubramanian was examined as D.W.2 to prove the defence of alibi. On the side of the defence, Ex.D1 & Ex.D2 were marked. M.O.1-black color kerosene can, M.O.2-rope, M.O.3-match box, M.O.4-key were also marked. After considering the evidence on record, the trial Court by the impugned Judgment convicted and sentenced the accused as mentioned above. Challenging the same, this appeal has been filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds of appeal and submitted that the impugned Judgment has to be set aside. He strongly

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contended that the prosecution failed to prove the charges against the appellant beyond reasonable doubt. He also added that the prosecution witnesses had motive to depose falsely. The learned counsel also added that during the occurrence time, the accused was working elsewhere and this has been proved by examining D.W.2. The case of the appellant is that he had nothing to do with the occurrence. He would contend that his wife committed self immolation and died as a result and it is not a case of murder. He called upon this Court to set aside the impugned Judgment.

4. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the impugned Judgment is well reasoned and that it does not call for interference.

5. We carefully considered the rival contentions and went through the evidence on record.

6. Kaleeswari / deceased had died on 22.09.2015 at around 2:00 pm in her house. As per Ex.P6-Postmortem certificate and the



testimony of P.W.16 - doctor who performed the postmortem, the death was due to extensive antemortem burns (100%) and sub arachnoid hemorrhage on the right side of the head. The only question that calls for consideration is whether there is any legally acceptable evidence to connect the appellant with the occurrence.

7. P.W.1 is the father of the deceased. He is also the defacto complainant in this case. He deposed that his daughter was given in marriage to the accused some 11 years prior to the occurrence and that both children born through the wedlock had died. According to him, the couple used to quarrel between themselves. He specifically deposed that some four months prior to the occurrence, the accused had given a police complaint against the deceased that she was responsible for the loss of four sovereign gold jewelry. P.W.1 resided in the very same street as that of the accused. According to P.W.1, he had returned from work at around 1:30 pm. He categorically deposed that the accused came running from his house and that he was holding knife in his hand. The accused is said to have told P.W.1 that he had finished off Kaleeswari. After saying so, the accused ran away from the spot. When



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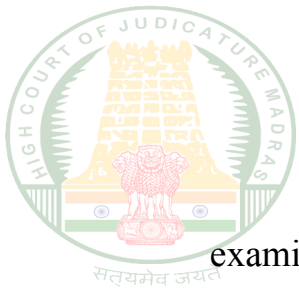
P.W.1 rushed to his daughter's house, he found scream emanating from there. The house was locked from outside. P.W.1 and others entered the house by breaking it open. The body of Kaleeswari was completely charred. The police was informed and they came to the spot. Later, P.W. 1 went to the police station and lodged Ex.P1-complaint. He identified M.O.1-black color kerosene can as taken from the occurrence spot. He also identified M.O.2-rope which was found in a burnt condition. He also identified M.O.4-key as well as M.O.3-match box. P.W.1 was cross-examined. It was elicited in the cross-examination that M.O.2-rope was burnt only at the tip. He also admitted that M.O.4-key was recovered from the window at the occurrence spot. He also admitted that he did not tell during police investigation that the accused was found running with a knife in his hands.

8. P.W.2-Vijayalakshmi is none other than the sister of the deceased. She was residing in the opposite house. She stated that on 22.09.2015 at around 2:00 pm, she heard screams from the Kaleeswari's house and she rushed out. She saw smoke coming out from the Kaleeswari's house. She tried to open the house. But she could not.

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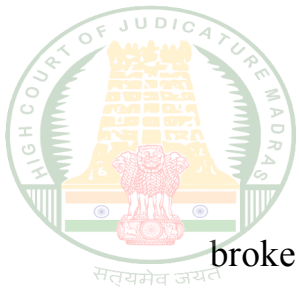
With the help of others, the door was broken open. She found Kaleeswari's body burning. Her legs were in a tied condition. She poured water and thereafter, she informed her father about the occurrence. P.W.1 and his employer Athi Narayanan went to the police station and lodged complaint. In the chief examination, P.W.2 nowhere stated that she saw the accused running from the house. However, in the cross-examination, she claimed to have seen the accused running from her sister's house. She further claimed that the accused was having the house key in his hand. We are of the view that if really the accused was running from his house after setting fire to his wife and locking the door, it was a very material circumstance which could not have omitted to be stated in the chief examination. P.W.1 was not re-examined. The evidence of P.W.2 clearly leads us to the doubt in the very presence of P.W.1. He could not have witnessed the accused running from the occurrence spot. Unfortunately, for the prosecution, the testimony of P.W.2 is completely at variance with that of P.W.1.

9. P.W.3 is not an eye witness. P.W.4 is the sister of the deceased and P.W.5 is the husband of P.W.4. Both of them in their cross

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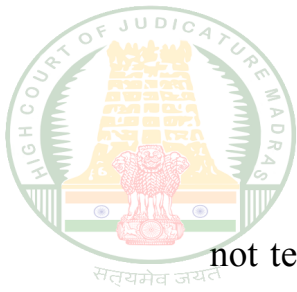
examination admitted that they came to the village after receiving information about the death of Kaleeswari. Therefore, their testimonies also do not in any way advance the case of the prosecution. The evidence of P.W.6 at best establishes that the marital relationship between the accused and the deceased Kaleeswari was under strain. He has no direct knowledge about the occurrence. P.W.7 is a hear-say witness. P.W.8 turned hostile.

10. The court below has relied heavily on the testimony of P.W.9 for finding the appellant guilty. P.W.9 is the cousin brother of the deceased. He was residing in the very same street three houses away. He deposed that on 22.09.2015, there was a quarrel between the accused and his wife since morning. At around 2:00 pm., the quarrel reached a crescendo and they locked the house from inside. P.W.9 and others did not intervene since it was a domestic quarrel. Thereafter, the accused locked the house from outside and attempted to run away. In the chief examination, he stated that he dropped the key and told P.W.1 / father of the deceased that his daughter was gone. He added that 15 minutes later, he heard screams from the house of the accused and that when they



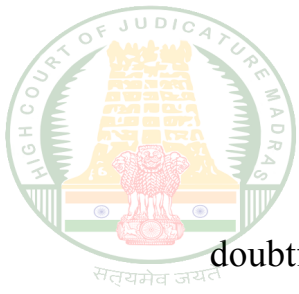
broke open the house and went inside, they found Kaleeswari burning with her legs tied. We need to consider whether this testimony can be accepted and acted upon. In the cross-examination, he conceded that the accused did not meet P.W.1 and that P.W.1 also did not meet the accused. He admitted that when P.W.1 came to the occurrence spot, it was around 2:30 pm.

11. What shakes the credibility of P.W.1's testimony is that he heard the scream 15 minutes after the accused ran away. This completely destroys the prosecution case which is that the accused set fire to his wife Kaleeswari and locked the house from outside and then ran away. It is common knowledge that if a person is set ablaze, certainly, he or she would scream. In this case, P.W.9 heard the scream only 15 minutes after the accused left the spot. It is consistent with the theory of self immolation projected by the accused. As already noted, the finding of guilt rests only on three testimonies ie., that of P.W.1, P.W. 2 & P.W.9. P.W.1 claimed that the accused told him that he had done away with his daughter and that he was holding knife in his hand and had had ran away. He admitted that during police investigation, he did

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not tell the police that the accused was having knife in his hand. P.W.2 who is none other than the daughter of P.W.1 and the sister of the deceased categorically stated that she alone had entered the house and that it was she who informed P.W.1 about the occurrence. P.W.9 also states that the accused never met P.W.1 and that P.W.1 came to the spot only at around 2:30 pm. It is also admitted that P.W.1's house is located at a distance of half kilometer from the occurrence house. Therefore, the testimony of P.W.1 cannot command any confidence. Its foundation has been completely undermined by the testimonies of P.W.2 & P.W.9. We have already given our reason as to why P.W.2's testimony implicating the accused cannot be accepted. The testimony of P.W.9 falsifies the prosecution case that the accused set fire to the deceased Kaleeswari and then ran away.

12. M.O.4-house key was recovered under Ex.P5. It was recovered from the bush near the local co-operative bank on 29.09.2015 at around 9:30 am. P.W.1 stated that the house key-M.O.4 was found in the window sill. P.W.9 testified that the key was dropped near the old house of P.W.1. Thus, the recovery of M.O.4 also appears to be highly

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doubtful. All the witnesses in unison had admitted that the house can be locked both from inside as well as outside. P.W.1 in his chief examination claimed that the house was broken open with the help of son-in-law Muthuraj and one Aravindhnan. In the cross-examination, he had admitted that Muthuraj-husband of P.W.2 was then working abroad and he was not even present in the spot. There is yet another reason as to why we cannot fully trust P.W.2's implication of the accused. It has been brought out in evidence that the accused had earlier given a criminal case against P.W.2' family and the prosecution was still pending when the occurrence took place. There was no love lost between the accused and P.W.2. Therefore, her testimony implicating the accused cannot be taken at its face value. It requires strong corroboration which is absent in this case.

13. The accused stepped into the witness box and examined himself as D.W.1 and he stated that on the occurrence day, he had gone to the work in the field of D.W.2-Balasubramanian. Balasubramanian also entered the witness box and spoke in favour of the accused. The accused further stated that only when he came to the village after the day's

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work, he came to know about the death of his wife. He further stated that he was taken to custody by the police and was formally arrested only a few days later. It is also not in dispute that the two children born to the deceased died. According to the accused, the second child had died just a month prior to the occurrence. According to the accused, she was in a depressed condition. That apart, there was also some serious dispute between the accused and his wife. Kaleeswari is said to have given away four sovereign gold to one Aravindhan.

14. It is quite possible that the deceased committed suicide by self immolation. We do not for a moment suggest that the evidence on record points only to suicide. But then, the possibility of suicide cannot be ruled out. The victim had died in a tragic manner. Merely because it has been shown that there were serious matrimonial disputes between the deceased and the accused, we cannot jump to the conclusion that it was the accused who had set fire to his wife. There must be legally acceptable evidence to connect the accused with the crime. Such evidence is lacking. The presence of the accused in the occurrence spot at 2:00 pm on 22.09.2015 is highly doubtful.



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15. We are of the view that the court below did not consider these circumstances. It glibly accepted the testimonies of P.W.1, P.W.2 & P.W.

9. It casually brushed aside the discrepancy regarding the recovery of M.O.4-house key. It is not in dispute that the deceased suffered 100% burns and the body was found charred. The witnesses claim that her legs were tied. If that be so, the rope would have also been burnt. It is admitted that M.O.2-rope was found burnt only at the top. This aspect has also been casually brushed aside by the court below. All the witnesses also stated that Kaleeswari was a well built woman. Admittedly, her hands were not found tied. Therefore, we find difficult to believe that the accused on his own and without the aid of another person could have tied the legs of the deceased. Of-course, the injury found on the head of the deceased has to be explained. P.W.16 states that when a person is set ablaze, he or she is bound to roll. In that process, the head injury could have been caused. He had also deposed that fire itself could have caused a blood clot in the head.



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16. For the aforesaid reasons, we are of the view that the prosecution has not established its case against the accused beyond reasonable doubt. The impugned Judgment is set aside. The appellant is acquitted of all the charges. The bail bond stands discharged. The fine amount, if any paid by him shall be refunded forthwith. The criminal appeal is allowed.

(G.R.S. J.) & (R.P. J.)
24.01.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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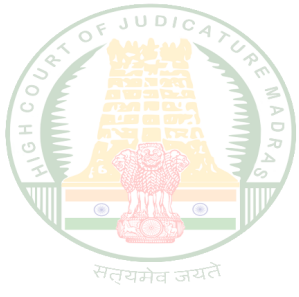
To:-

- 1.The Fast Track Mahila Court, Virudhunagar District,
Srivilliputhur.
- 2.The Inspector of Police,
Alangulam Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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4. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.
and
R.POORNIMA, J.

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