

*CrI.A.(MD)No.174 of 2020*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**  
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**DATED : 17.10.2022**

**CORAM :**

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU**

**and**

**THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH**

**CrI.A.(MD)No.174 of 2020**

Balamurugan

... Appellant / sole accused

**Vs.**

State Represented by  
The Inspector of Police,  
Thirumangalam Police Station,  
Thirumangalam Taluk Police Station,  
Madurai District.  
(Crime No.48 of 2018)

... Respondent/Complainant

**PRAYER:** Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and order dated 26.09.2019 in Spl.S.C.No.44 of 2018 on the file of the learned Sessions Judge, Mahalir Neethimandram, Madurai, Madurai District.



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For Appellant : Mr.B.N.Raja Mohamed

For Respondent : Mr.R.Meenakshi Sundaram  
Additional Public Prosecutor

### **JUDGMENT**

**J.NISHA BANU, J.**  
**and**  
**N.ANAND VENKATESH, J.**

This criminal appeal has been filed against the order and judgment of the learned Sessions Judge, Mahalir Neethimandram, Madurai, made in Spl.S.C.No.44 of 2018, dated 26.09.2019, convicting and sentencing the appellant in the following manner:

<b>Sl. No.</b>	<b>Conviction for offence under</b>	<b>Sentence/Punishment</b>
1.	Section 342 IPC	One year Rigorous Imprisonment and a fine of Rs.1000/-, in default, to undergo one month Rigorous Imprisonment.
2.	Section 302 IPC	Life Imprisonment and a fine of Rs.10,000/-, in default, to undergo two years Rigorous Imprisonment.

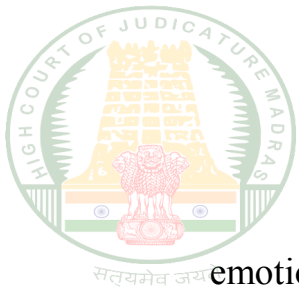


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2. This is yet another case where a man did not have the maturity to accept the rejection of love proposal made to the deceased and hence, decided to kill her in a gory fashion by pouring petrol on her and setting her on fire. This loathsome act was committed by the appellant with the only motive that the girl who did not reciprocate the love proposal made by him, should not live in this world and she should not have any relationship with anybody else in this world. Such incidents are on the raise and it only reflects the fact that man considers woman like a chattel and he wants to own or forcibly take her under his control, without understanding that a woman is also a human being, who is entitled to decide on her wishes.

3. Love and hate are related to each other in a complex manner. There has been a serious study by the psychologists as to how under certain conditions, a persons's love generates a corresponding level of hate when negative events occur with his or her romantic partner. Whatever may be the result of the study, such mutual respect for a woman must start from home and it must be inculcated by the parents and the society as such. The present day youngsters fall too short on the



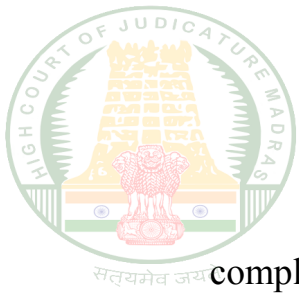
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emotional quotient and even the slightest of disturbance and rejection, makes them take extreme steps without understanding its consequences.

It is high time that our educational system starts focusing more on the emotional quotient than on the intelligence quotient. If this is not done, howsoever successful or bright an youngster may be, he is not ready to take up emotional challenges and the situation worsens when the parents instead of guiding their children start pampering them. This case requires this prelude since a man aged about 28 years was going behind a girl, who was studying in 9<sup>th</sup> standard and was expecting her to react positively and get into a love affair and when it did not fructify, he chose to resort to a monstrous act of pouring petrol on the girl and setting her on fire. He did not realise that this foolish act will bring to an end his connections with the society to a grinding halt and will confine him to the prison for his life.

4. The appellant was working as an AC mechanic and he fell in love with the deceased, who was aged about 14 years and was studying in 9<sup>th</sup> standard. The appellant seems to have indulged in harassing the victim girl even on a previous occasion and it resulted in a



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complaint which was taken on file in Crime No.87 of 2017 by the All Women Police Station, Thirumangalam. This resulted in a previous enmity towards the deceased and the aggression of the appellant was only getting even more severe. The deceased seems to have told in categorical terms that she is not interested in getting into a relationship with the appellant.

5. On 16.02.2018 at about 4.30 p.m, when the deceased was returning back from school along with her friends, the appellant is said to have come in his two wheeler and restrained the deceased and poured petrol on her and set her on fire with a cigarette lighter. The whole body of the deceased was burnt and she was rushed to the Thirumangalam Government Hospital for first aid and from there, she was referred to the Government Rajaji Hospital, Madurai for further treatment. The deceased succumbed to the injuries on 27.02.2018 at about 4.15 a.m.

6. A complaint was given by the mother of the deceased(P.W-1) on 16.02.2018 at about 9.00 p.m., and an FIR came to be registered by P.W-14 in Crime No.48 of 2018. The investigation was



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taken up by P.W-26 and on completion of the investigation, a final report was filed before the Court below.

7. The Court below framed charges against the appellant for offence under Section 11(4) of the POCSO Act and Sections 342 and 302 IPC. The prosecution examined P.W-1 to P.W-27 and marked Ex.P1 to Ex.P31 and identified and marked M.O1 to M.O17.

8. The Court below placed the incriminating evidence collected during the course of trial by questioning the appellant under Section 313 (1) (b) Cr.P.C and the appellant denied the same as false. On considering the facts and circumstances of the case and on appreciation of evidence available on record, the Court below found that the prosecution has proved the case beyond reasonable doubts and hence convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the present criminal appeal has been filed before this Court.



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9. The learned counsel for the appellant submitted that P.W-1 could not have witnessed the incident and she has been made as a witness only because she is the mother of the deceased. The learned counsel also read the evidence of P.W-1 to P.W-9 and pointed out certain discrepancies and questioned the reliability of those witnesses, who were examined by the prosecution as eyewitnesses. The learned counsel further submitted that the deceased was in an unconscious state as per the evidence of P.W-14 and P.W-16 and the doctor, who gave the fitness certificate, was not even examined by the prosecution and hence, the dying declaration that was recorded by P.W-22 cannot be relied upon. It was further submitted that there was no investigation as to how the appellant sustained injuries on both the hands at the time of the alleged occurrence and that would establish that the incident did not take place in the manner in which the prosecution has projected its case. The FIR reached the Court only on 17.02.2018 at 10.30 a.m., and there was no sufficient explanation for this substantial delay. The learned counsel, in order to substantiate his submissions, relied upon the judgments in the following cases:

a. *Udayakumar v. State rep. by the Inspector of Police, Manali*



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*Police Station, Chennai*, reported in 2020 (2) LW (CrI) 819.

b. *Kozhi Prakash and others v. Inspector of Police, Kannankurichi Police Station, Salem District*, reported in 2021 (1) MLJ (CrI) 113.

c. *Jayamma and anothers v. State of Karnataka*, reported in 2021(2)MWN(Cr.) 356 (SC) and

d. *Ratnasamy v. State by Inspector of Police, Thiyaadurgam Police Station*, reported in 2022 (3) MLJ (CrI) 321.

10. Per contra, Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor appearing for the State submitted that the evidence of P.W-1 to P.W-9 read along with the dying declaration recorded by P.W-22, clearly makes out a case against the appellant and the same is also supported by the evidence of the doctor, who was examined as P.W-18 and through whom the postmortem certificate was marked as Ex.P8. It was submitted that the Court below had taken into consideration the entire evidence and had come to the correct conclusion and the order and judgment of the Court below does not warrant any interference.





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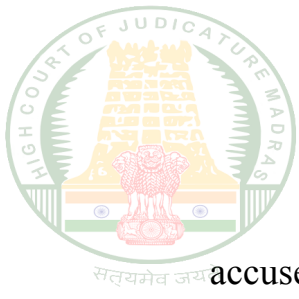
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**11.** This Court has carefully considered the submissions made on either side and the materials available on record.

**12.** This Court will first go into the dying declaration that was recorded by P.W-22, who, based on the requisition letter received from Government Rajaji Hospital, Madurai, recorded the dying declaration. The deceased was in emergency ward and she was identified by the duty doctor. The dying declaration is marked as Ex.P13 and it is seen that the deceased was in a conscious state of mind and she has explained about the incident in a cogent manner. It is seen at the bottom of the dying declaration that one Dr.Lakshmibai had certified that the deceased was conscious, oriented and in a fit state of mind throughout the recording of the dying declaration.

**13.** This Court will now focus on the evidence of P.W-1 to P.W-9, who were the eyewitnesses to the incident.

**14.** P.W-1 is the mother of the deceased. She knows the



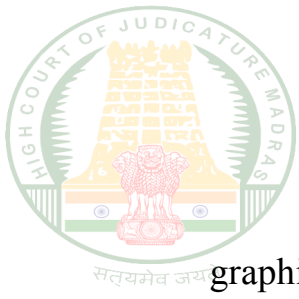
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accused person even before this incident. She states in her evidence that the deceased was coming along with her friends and at that time, the accused came in a bike and saw her going towards the auto owned by P.W-3. He restrained the deceased and poured petrol on her, after abusing her in filthy language and set her on fire with a cigarette lighter. Seeing this, P.W-3 rushed with a door mat and managed to extinguish the fire. By then, the deceased had sustained serious burn injuries. She also speaks about the deceased being taken to the hospital in an ambulance and the recording of the dying declaration by the Magistrate. She was the one, who set the law in motion by giving the complaint (Ex.P1), which was also countersigned by her husband.

**15.** P.W-2 is the resident of that locality and she speaks about the earlier incident which resulted in registering the FIR against the accused and also about the occurrence, adding support to the evidence of P.W-1.

**16.** P.W-3 is an auto driver and on 16.02.2018, at about 4.00 p.m., P.W-2 along with another woman were riding in the auto. He also



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graphically explains the incident in line with what was spoken by P.W-1 and P.W-2. P.W-4 to P.W-6 are the friends of the deceased, who were coming along with the deceased from the school and after satisfying their mental capabilities to depose before the Court, the Court has recorded their evidence and their evidence is perfectly in line with the evidence of P.W-1 to P.W-3.

17. P.W-7, who is a local resident and P.W-8 and P.W-9, who are the teachers in the Primary School, also explained about the incident in a cogent manner and it falls in line with the evidence of the other eyewitnesses.

18. The eyewitness account as can be deduced from the evidence of P.W-1 to P.W-9, shows that it is totally trustworthy and unimpeachable and it has not been discredited in any manner. Eventhough the learned counsel for the appellant submitted that the testimonies of P.W-1 to P.W-9 contradict each other, this Court does not find those contradictions to affect the root of the case and it can be safely disregarded. The version of the eyewitnesses corroborates the dying



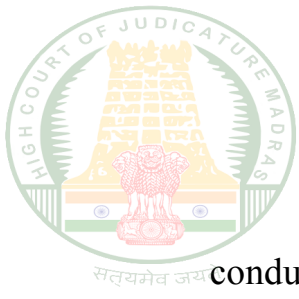
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declaration given by the deceased to the learned Magistrate. As stated by the Apex Court in *Shahaja alias Shahajan Ismail Mohd. Shaikh v. State of Maharashtra* reported in **2022 SCC Online SC 883** the two principal considerations for this Court are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence.

19. By applying this test, this Court is convinced about the evidence of the eyewitnesses supported by the dying declaration of the deceased.

20. The evidence of P.W-18, who is the doctor, who



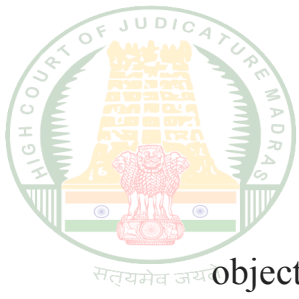
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conducted the postmortem and gave the final opinion (Ex.P8) shows that the deceased suffered the following injuries in the body:

*“Extensive Dermo epidermal infected burns involving the following areas: Upper scalp, whole of face, front, sides and back of neck, front of chest, back of chest, back of abdomen, upper part of front of both thigh. The base of the burnt areas is reddish in colour and the infected areas are covered with foul smelling pus material in patches. Partial degloving of skin noted on both hands. Peeling and blackening of skin noted all over the burnt areas in patchy manner. Singeing of hairs noted over scalp, eyebrows, eyelashes. IV drip wound noted on inner aspect of right ankle.”*

**21.** P.W-18 has also opined that the deceased died only due to extensive burns suffered by her and its complications.

**22.** P.W-10 and P.W-11, who are the observation mahazar witnesses had deposed in detail about the recovery of the material



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objects. As per the chemical examination report(Ex.P15), petrol was detected in almost all material objects. Hence, the accused pouring petrol on the deceased and setting her on fire, has been sufficiently proved through scientific evidence also.

**23.** The injuries suffered by the appellant has been spoken by the doctor, P.W-23, who treated the appellant and prepared the Accident Register (Ex.P14), which shows that there were injuries in the left leg of the appellant and there was a fracture. This injury suffered by the appellant, does not in any way have an impact on the case of the prosecution or discredit the version of the eyewitnesses or the dying declaration given by the deceased.

**24.** In the considered view of this Court, we come to a categorical conclusion that the prosecution has proved the case beyond reasonable doubts with abundant evidence and there is absolutely no ground to interfere with the well considered order and judgment passed by the Court below.



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**25.** In the result,

(i) This criminal appeal stands dismissed.

(ii) The conviction and sentence passed by the learned

Sessions Judge, Mahalir Neethimandram, Madurai, Madurai District, in

Spl.S.C.No.44 of 2018 dated 26.09.2019, is hereby confirmed.

**[J.N.B, J.] & [N.A.V., J.]**  
**17.10.2022**

Index : Yes/No  
Internet : Yes  
PJL

To

1. The Additional District (Fast Track),  
Nagercoil.

2. The Inspector of Police,  
Marthandam Police Station,  
Kanyakumari District.

3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**and**

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PJL

**Judgment made in  
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**17.10.2022**