



Crl.A.No.599 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Raja

...Appellant/Accused

VS

State rep. by
Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai District.
Crime No.556 of 2008

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure Code, 1973, to set aside the Judgment made in S.C.No.44 of 2009 dated 12.07.2019 on the file of the learned Session Judge, Fast Track Mahila Court, Thiruvannamalai.



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For Appellant : Mr.R.Vivekananthan
for
M/s.S.Jim Raj Miltan
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by ***SUNDER MOHAN,J.***)

This Criminal Appeal has been filed by the accused challenging the conviction and sentence imposed upon him vide judgment dated 12.07.2019 in S.C.No.44 of 2009 on the file of the learned Sessions Judge, Tiruvannamalai.

2. For the sake of convenience, the accused is hereinafter referred to as the 'appellant'.

3(i). It is the case of the prosecution that the appellant and the deceased were in a live in relationship, and due to a quarrel between them, the appellant caused the death of the deceased by pouring kerosene and set her ablaze on 26.05.2008 at about 10:00 p.m.; that the appellant locked the door of the house from outside and fled from the scene of the occurrence;



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and that P.W.3, who was a neighbour of the deceased, on hearing an alarm raised by the victim, opened the door from outside and made an attempt to rescue the victim.

(ii) On information that his daughter had suffered burn injuries and was admitted to the hospital, P.W.1/father of the deceased rushed to the hospital and met the victim. The victim is said to have told P.W.1 that the appellant set her ablaze. Thereafter, P.W.1 made arrangements to take the victim from Thiruvannamalai Government Hospital to Pondicherry Jipmer Hospital. While taking the victim to that hospital, the victim died.

(ii) He gave a report [Ex.P1] on 27.05.2008 at about 9:30 a.m.,. In the meantime, on 27.05.2008 at about 12:15 a.m., P.W.21/Sub Inspector of Police, received an intimation from Thiruvannamalai Government Hospital, went to the police station, and recorded the statement of the deceased [Ex.P13]. On the basis of the said statement, he registered the FIR in Crime No.556 of 2008 for the offence under Section 307 of the IPC. The FIR was marked as Ex.P14. P.W.23/Deputy Superintendent of Police took up the



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investigation after the case was altered to Section 302 IPC on 27.05.2008, he went to the scene of the occurrence, prepared the Observation Mahazar [Ex.P16] and Rough Sketch [Ex.P17] and examined the witnesses. He seized the kerosene plastic can [M.O.2], three match sticks [M.O.4], and a matchbox [M.O.3] in the presence of witnesses under Seizure Mahazar. He conducted an inquest over the body of the deceased and prepared the inquest report, [Ex.P21]. He arrested the appellant at about 6:00 p.m., recorded the confession and the admissible portion of the confession statement, which was marked as Ex.P18. He seized lungi [M.O.6] and a black colour rope [M.O.5] under Seizure Mahazar on the confession of the appellant. Thereafter, P.W.25/the Additional Superintendent of Police took up the investigation, conducted the investigation for a short while, and handed over the investigation to P.W.26/Inspector of Police. After examination of all witnesses, the scientific experts and the post-mortem doctor, P.W.26, filed the Final Report for the offence under Section 302 of the IPC on 24.09.2008 before the concerned Judicial Magistrate.



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Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.44 of 2009 and was made over to the learned Sessions Judge, Tiruvannamalai for trial. The trial Court framed charges under Sections 302 of the IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

(iv) To prove the case, the prosecution examined 26 witnesses as P.W.1 to P.W.26, marked 21 exhibits as Ex.P1 to Ex.P21, and marked 8 Material Objects as M.O.1 to M.O.8. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant did not examine any witness or mark any document on his side.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of the charge levelled against him.



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Accordingly, the appellant was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for two years for the offence under Section 302 of the IPC. Hence, he has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.R.Vivekananthan, learned counsel for the appellant, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/Police.

5.The learned counsel for the appellant submitted that the prosecution has not established its case beyond reasonable doubt; that the dying declarations of the deceased do not inspire confidence; that in any case, the evidence would show that the deceased had offered grave and sudden provocation to the appellant, which is revealed from his confession; and that those portions of his confession can be taken into consideration to hold that the act of the appellant would fall within any of the exceptions under Section 300 of the IPC.



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6. The learned Additional Public Prosecutor for the respondent, *per contra*, submitted that the deceased had consistently stated about the occurrence to her neighbours, to the doctor, police and to the learned Judicial Magistrate, who recorded the dying declaration and in the light of such evidence, the Trial Court was right in convicting the appellant, and no interference is called for.

7. We have carefully considered the rival submissions and perused all the relevant materials available on record.

8. The prosecution had examined 26 witnesses. P.W.1 is the father of the victim. Based on the information given to him, he went to the hospital and met the victim at the hospital. The victim had stated to him that the appellant had poured kerosene on her and set her ablaze. He informed about the death of the deceased to the police, who had already registered the case under Section 307 of the IPC. The defence counsel in spite the cross-examination could not discredit his testimony in any manner. P.W.2,



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the mother of the deceased, had also stated that when she asked her daughter/deceased as to what happened, the deceased stated that the appellant had poured kerosene and set her ablaze. The deceased had also informed P.W.3, who was also closely related to her. P.W.4 was the neighbour of the deceased who spoke about the quarrel that took place between the appellant and the deceased, four days before the occurrence. On the fateful day, she saw smoke coming out of the house of the deceased, and when she went to that house, it was locked from outside. She learnt from the deceased that the appellant ran out of the house after setting her ablaze. P.W.5 is the daughter of P.W.4 and corroborated P.W.5's version. P.W.6 was another neighbour, who had gone and seen the deceased and deposed that the deceased was taken in an ambulance to the hospital. P.W.7 speaks about the earlier quarrel. P.W.12, was another neighbour deposed that the deceased, informed him that the appellant set her ablaze. The evidence of the above witnesses confirms that the appellant and the deceased were living in the same house; that the appellant fled from the scene of occurrence and locked the house from outside; and that the deceased had informed the neighbours that the appellant set her ablaze.



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9. After the deceased was admitted to the hospital, P.W.21/Sub Inspector of Police recorded the statement of the deceased on 27.05.2008 at 12:15 a.m.[Ex.P13]. In the said statement, the deceased had narrated the sequence of events and had stated she and the appellant were in a live in relationship; that on the day of occurrence, the appellant came home in an inebriated condition and picked up a fight with her and told her that he would go back to live with his first wife, and thereafter poured kerosene and set her ablaze. A little later, at about 1.15 a.m., on 27.05.2008, P.W.24, the learned Judicial Magistrate recorded the Dying Declaration. The said Dying Declaration was marked as Ex.P19. In the Dying Declaration, she stated as follows:

“ இரண்டு மாதம் முன்பு ராஜா த/பெ.
முனுசாமி தென்பள்ளிப்பட்டை சேர்ந்தவர் என்னை
இரண்டாவது திருமணம் செய்து கொண்டார். வீட்டுக்கு
தெரியாமல் ஓடிவந்து காதலித்து திருமணம் செய்து
கொண்டேன். நேற்று மது குடித்துவிட்டு வந்தார். ஏன்
குடித்தாய் என்று கேட்டேன் அதற்கு என்னை
அடித்தார். பின் தன் பொண்டாட்டியிடம் போன் செய்து



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பேசிவிட்டு வந்து என்னை வீட்டுக்குள் வைத்து
மண்ணெண்ணெய் ஊற்றி தீப்பற்றவைத்து விட்டு
கதவை வெளியே போய் பூட்டிவிட்டு ஓடிவிட்டான்.
இதுதான் நடந்தது. நான் காப்பாற்றுங்க, காப்பாற்றுங்க
என்று கத்தினேன். அக்கம் பக்கத்தில் இருந்தவர்கள்
ஓடி வந்து எப்படியோ கதவை திறந்து என்னை இங்கு
கொண்டு வந்து சேர்த்தார்கள்.”

The Doctor/P.W.14 had also certified that the deceased was in a conscious and good state of mind when making the Dying Declaration. The above Dying Declaration is consistent with an earlier statement made to the police marked as Ex.P13. In the Accident Register, [Ex.P7], the Doctor had made the entry that the deceased had stated that the appellant had set her ablaze. The post mortem report [Ex.P9], shows that the deceased died due to shock and burns. The report of the Forensic Science Laboratory [Ex.P10] suggests that kerosene was deducted from the rope seized from the appellant.

10. In the light of the evidence of the parents of the deceased/P.W.1 and P.W.2, neighbours of the deceased/P.W.4, P.W.6 and others, the



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evidence of the learned Judicial Magistrate/P.W.24, besides the Dying Declarations Ex.P13 and Ex.P19, the entries made in the Accident Register Ex.P7 and the post mortem certificate, Ex.P9, we are of the view that the prosecution has proved its case beyond reasonable doubt that the deceased suffered death due to burn injuries and the appellant was the cause for the injuries.

11. Therefore, we see no reason to interfere in the Judgment of the trial Court, and hence, this Criminal Appeal is liable to be dismissed and accordingly, dismissed. The judgment dated 12.07.2019 made in S.C.No.44 of 2009 on the file of the learned Sessions Judge, Tiruvannamalai, is hereby confirmed.

(M.S.R.,J.) (S.M.,J.)
15.07.2024

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Copy to:

1. The Sessions Judge,
Tiruvannamalai.
2. Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamalai District.
3. The Public Prosecutor,
High Court, Madras



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