



WEB COPY



Crl.A.No.792 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.792 of 2018

G.Ramshankar

...Appellant/Sole Accused

vs

The State Rep. by
Inspector of Police,
Perumanallur Police Station,
Tiruppur District.
Crime No.140 of 2014.

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to call for the records and set-aside the order passed in Spl.S.C.No. 1 of 2015 on the file of the Principle District Cum Sessions Judge, Tiruppur dated 25.10.2018.

For Appellant : Mr.V.Krishnamoorthi
for Mr.J.Pradeep

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



Crl.A.No.792 of 2018

JUDGMENT

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

WEB COPY

This Criminal Appeal has been filed by the sole accused challenging the conviction and sentence imposed upon him vide judgment dated 25.10.2018 in Spl.S.C.No.1 of 2015 on the file of the learned Principal and District cum Sessions Judge, Tiruppur.

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 living as husband and wife since November 2013; that the appellant had pledged gold jewels and a silver anklet belonging to the deceased and obtained a loan to meet out the household expenses; that when the deceased demanded money from the appellant, the appellant assaulted the deceased; that on 19.05.2014 at about 11.30 p.m., in order to threaten the appellant and make him redeem the pledged jewels, the deceased had poured kerosene on herself and threatened to commit suicide; that the appellant, in order to cause the death of the deceased, threw a lighted match stick on the



Crl.A.No.792 of 2018

deceased and caused her death.

WEB COPY

(ii) It is the further case of the prosecution that on hearing the noise and commotion from the house, the neighbours P.W.2 and P.W.4 came to the house to whom the deceased is said to have stated about the occurrence; that the deceased was thereafter taken to the Government Hospital, Tiruppur, through an ambulance by the appellant, where P.W.8/Doctor had treated her and had made entries in the accident register at about 12.20 a.m., on 20.05.2014 which was marked as Ex.P4. P.W.8 informed the learned Judicial Magistrate – I, Tiruppur for recording the dying declaration. Accordingly, P.W.16/learned Judicial Magistrate No.1, Tiruppur, recorded the dying declaration of the deceased at about 8.35 a.m., on 20.05.2014 which was marked as Ex.P.14. On intimation from the hospital authorities, P.W.18/Inspector of Police went to the hospital and recorded the statement of the deceased, which was registered in Crime No.140 of 2014 under Sections 307 of the IPC and 3(2) (v) of the SC/ ST (Prevention of Atrocities) Act Amendment of Ordinance 2014 r/w Section 4 of the Tamil Nadu Prohibition of Women Harassment Act (TNPHW). Since the deceased



Crl.A.No.792 of 2018

belonged to the Scheduled Caste and the offence under the SC/ST Act was made out, the investigation was transferred to the Deputy Superintendent of Police [P.W.19] by the Superintendent of Police, in his proceedings marked as Ex.P19.

(iii) P.W.19 took up the investigation, went to the scene of occurrence, prepared the observation mahazar [Ex.P2] and rough sketch [Ex.P20], examined the witnesses, and on 20.05.2014 at about 6.30 p.m., he arrested the appellant and thereafter examined the other witnesses. On 28.05.2014, he made a request to the Deputy Thasildar to issue the caste certificate of the deceased. On 29.05.2014, on receipt of information from the hospital that the victim died, he altered the offence from Sections 307 of the IPC, 3(2) (v) of the SC/ST (POA) Amendment of Ordinance 2014 and 4 of the TNPHW Act to Section 302 of the IPC and Section 3(2) (v) of the SC/ST Act (Prevention of Atrocities) Amendment of Ordinance 2014 and 4 of TNPHW Act. The alteration report is marked as Ex.P22. He conducted an inquest in the presence of Panchayathars and prepared the inquest report (Ex.P23). He examined the other witnesses and filed the final report on



Crl.A.No.792 of 2018

14.07.2014 against the appellant for the offences under Sections 302 of the IPC and 3(2) (v) SC/ST (Prevention of Atrocities) Act 2014, before the learned Judicial Magistrate No.II, Tiruppur.

(iv) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in Spl.S.C.No.1 of 2015 and was made over to the learned Principal District and Sessions Judge, Tiruppur, for trial. The trial Court framed charges under Section 302 and 3(2)(v) of TN SC/ST (Prevention of Atrocities) Amendment Ordinance, 2014 against the appellant and when questioned, the appellant pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 19 witnesses as P.W.1 to P.W.19, marked 23 exhibits as Ex.P1 to Ex.P23, and marked 3 Material Objects as M.O.1 and M.O.3. 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 witnesses or mark



Crl.A.No.792 of 2018

any documents on his side.

WEB COPY

(vi) 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 under Section 302 of the IPC alone. Accordingly, the appellant was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 of the IPC. Hence, he has preferred the instant appeal challenging the said conviction and sentence.

4. Heard, Mr.V.Krishnamoorthi for Mr.J.Pradeep, learned counsel appearing for the appellant/accused, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. (i) The learned counsel for the appellant submitted that the appellant was acquitted for the offence under the SC/ST Act as the prosecution has failed to establish the same; and that the prosecution relies



Crl.A.No.792 of 2018

upon three dying declarations of the deceased that are contrary to each other and therefore, do not inspire confidence.

(ii) The learned counsel for the appellant also pointed out the evidence of P.W.3, to show that the version of the deceased in the last dying declaration, which is a statement given to the Investigating Officer, cannot be believed.

(iii) The learned counsel further submitted that the conduct of the appellant in taking the deceased to the hospital, being in the hospital throughout, and the burn injury in his hand would further belie the prosecution case and hence, he prayed for acquittal of the appellant.

6. The learned Additional Public Prosecutor *per contra* submitted that the evidence of witnesses and the dying declarations conclusively established the involvement of the appellant; that the trial court was right in convicting the appellant and that no interference is called for. Therefore, he prayed for dismissal of the appeal.



WEB COPY

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

8. As stated earlier, the prosecution had examined 19 witnesses to prove its case. P.W.1 is the sister of the deceased, who speaks about the deceased, telling her that the appellant had set her ablaze. P.W.2 and P.W.4 are neighbours to whom the deceased is also said to have made a statement that the appellant had set her ablaze. P.W.3 is another neighbour who speaks about breaking open the door and entering the house and also speaks about the deceased telling her and others about the occurrence. P.W.5 is the brother of the deceased, who also states that the deceased told him about the occurrence. P.W.6 is also another relative who states what was stated by the deceased. P.W.7 is the landlord of the house where the deceased and appellant lived. He is a witness to the observation mahazar, [Ex.P2] and the seizure mahazar, [Ex.P3]. P.W.8 is a Doctor who treated the appellant and made entries in Ex.P4. P.W.9 is the Spl.Tahsildar [Adi Dravidar Welfare], Chengam, who had issued the caste certificate of the appellant [Ex.P7],



Crl.A.No.792 of 2018

stating that the appellant belongs to the Vanniyar Community. P.W.10 to P.W.12 are pawn brokers who speak about the fact that the appellant pledged jewels in their shops and obtained a loan. P.W.13 is the Doctor who gave the death intimation to the police. P.W.14 is the post-mortem Doctor who issued the post-mortem certificate [Ex.P12]. P.W.15 is the Sub Inspector of Police who obtained the caste certificate from the Deputy Thasildar, [Ex.P14]. P.W.16 is the learned Sub-Judge, who recorded the dying declaration of the deceased. P.W.17 is the constable who had assisted the investigation. P.W.18 is the Inspector of Police who recorded the statement of the deceased and registered the FIR [Ex.P18]. P.W.19 is the Investigating Officer who filed the final report.

9. The prosecution has established the fact that the deceased suffered burn injuries and succumbed to those injuries on 29.05.2014. The fact that she sustained burn injuries on 20.05.2014 is also confirmed by P.W.8, the Doctor, who had made entries in the accident register [Ex.P4]. The post-mortem Doctor/P.W.14 found burn injuries on the face, neck, chest, knees, thighs and hips besides the feet and stomach of the deceased.



Crl.A.No.792 of 2018

The prosecution had established that the deceased died due to *Septicimea*, due to burns, as could be seen from the post-mortem report, Ex.P12.

10. The next question is whether the appellant was the cause of the burn injuries sustained by the deceased. P.W.1 to P.W.6 have all uniformly stated that the deceased told them that she poured kerosene on herself to threaten the appellant and make him redeem her jewels pledged by him and thereafter, the appellant threw a lighted match stick on the deceased. This is the prosecution version, as could be seen from the charge and the third dying declaration, which is said to have been recorded by P.W.19, the investigating officer. P.W.18 who registered the first information report, recorded the statement on 20.05.2014 at about 11.45 a.m. In that statement, the prosecution version is reflected. In addition, the deceased had stated that the appellant had also sustained burn injuries in his right hand. She has referred to the presence of P.W.3, Janaki and Vimala, who were not examined by the prosecution. In the said statement, we may also note she has not referred to the presence of any of the other relatives or about informing them about the occurrence later at the hospital.



Crl.A.No.792 of 2018

WEB COPY

11. Be that as it may. In the earliest version, which is reflected in the accident register, which was recorded at 12.20 a.m., on 20.05.2014, the deceased was brought by her husband to the hospital. P.W.8, the Doctor who made entries in the said accident register, stated in his deposition that the deceased was semi conscious at the time of admission. His deposition reads as follows:

“கடந்த 20.05.2014 அன்று மேற்படி
மருத்துவமனையில் பணியில் இருந்த போது,
அதிகாலை 12.20 மணியளவில் சுந்தரி, வயது 26
க.பெ.ராமச்சங்கர் என்பவர் அவரது கணவர்
ராமச்சங்கரால் சிகிச்சைக்கு அழைத்து வரப்பட்டார்.
அவர் 19.05.2014 அன்று இரவு 11.30 மணியளவில்
மண்ணெண்ணெய் ஊற்றி தீ வைத்துக் கொண்டதாக
கூறினார்.”

12. We may also note that the entries in Ex.P4 are not clear. However, this version of the Doctor has not been disputed by the prosecution.



Crl.A.No.792 of 2018

The above version therefore suggests that the victim stated to the doctor that she had committed self-immolation. The next statement made by the deceased is before the Doctor, who recorded the dying declaration at 8.35 a.m on 20.05.2014. In the said dying declaration, the deceased has stated that the appellant had poured kerosene and threw a lighted match stick on her, and thereafter, she ran out of the house. The relevant portion reads as follows:

“இரவு 11 அல்லது 12 மணி இருக்கும், நான்
மண்ணெண்ணய் ஸ்டவ் பற்றவைத்துக் கொண்டு
இருந்தபொழுது கேனில் இருந்த மண்ணெண்ணயினை ஊற்றி
கையில் வைத்திருந்த தீப்பெட்டியால் பற்ற வைத்து விட்டார்,
வீடு தாழ்ப்பாள் போட்டிருந்தது. நான் போட்ட நைட்டியில் தீ
பற்றியது. தாழ்ப்பாளை திறந்து கொண்டு நைட்டியை கழட்டி
போட்டு வெளியே ஓடி வந்தேன் பொதுமக்கள் என்னை
ஆம்புலன்ஸ் மூலம் மருத்துவமனைக்கு அழைத்து வந்தனர்”

13. This version is contrary to the prosecution case inasmuch as in this



Crl.A.No.792 of 2018

statement, she stated that the appellant poured kerosene, whereas the prosecution case, is that the deceased herself poured kerosene on her to threaten the appellant. Secondly, in this version, we find that the deceased ran out of the house, and the public took her to the hospital. This version is contrary to the version of P.W.3, who would state that the door was locked and when they pushed the door and forced themselves into the house, they found the deceased burning. P.W.3 and the other evidence on record that it was the appellant who took the deceased to the hospital. Therefore, this dying declaration, besides being contrary to the prosecution version, is not in conformity with the other evidence on record as regards who admitted the deceased to the hospital. It is also not in conformity with the earliest version recorded by P.W.8 in Ex.P4, accident register. The final version, which is recorded by P.W.18, the Inspector of Police is the prosecution case, which is spoken to by P.W.1 to P.W.6 in a parrot-like manner. Apart from the fact that the deceased herself has not stated in the statement before the Investigating Officer about the presence of P.W.1, P.W.2, P.W.4 to P.W.6, their evidence, in our view, does not inspire confidence, in the light of the other evidence, which we have extracted above.



WEB COPY

14. We find that there are three different versions of the deceased that cannot be reconciled with each other. The conduct of the appellant, calling the ambulance and taking the deceased to the hospital, would also belie the prosecution case. That apart, it is the version of the deceased in the third dying declaration, namely the statement recorded by the Inspector of Police, P.W.18, that the appellant also suffered burn injuries in his right hand.

15. Above all, we find that the prosecution version that the deceased poured kerosene on herself to threaten the appellant and thereafter the appellant threw a lighted match stick on her appears to be inherently improbable. The earliest version given to the doctor, which is entered in the accident register, Ex.P4, confirms the said fact.

16. Considering all the above factors, we are of the view that it would be highly unsafe to render a finding of guilt on the basis of evidence on record. Hence, the conviction and sentence imposed on the appellant, are liable to be set aside.



Crl.A.No.792 of 2018

WEB COPY

17. In the result, the Criminal Appeal is allowed and the appellant is acquitted of the charge. The conviction and sentence imposed upon the appellant in Spl,S.C.No.1 of 2015 dated 25.10.2018, on the file of the learned Principal District and Sessions Judge, Tiruppur, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
25.06.2024

Internet : yes

Index : yes/no

Neutral citation : yes/no
dk

Copy to:

1. The Principal District Cum Sessions Judge,
Tiruppur.

2. The Inspector of Police,
Perumanallur Police Station,
Tiruppur District.



WEB COPY



Crl.A.No.792 of 2018

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

dk

3.The Public Prosecutor,
High Court, Madras.

Crl.A.No.792 of 2018

25.06.2024