

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.455 of 2015

Elumalai

... Appellant/Single Accused

vs.

State

by the Inspector of Police
Pochampalli Police Station
Krishnagiri District
Crime No.307/2009

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment passed by Sessions Court, Fast Track Mahila Court, Krishnagiri, Krishnagiri District in S.C.No.179/2014 dated 30.06.2015.

For appellant :Mr.R.Parthiban for Mr.E.Kannadasan

For Respondent :Mr.P.Govindarajan, Addl.Public.Prosecutor

JUDGMENT

Challenge in this Criminal Appeal is to the conviction and sentence dated 30.06.2015 passed in Sessions Case No.179 of 2014 by the District and Sessions Court, Fast Track Mahila Court, Krishnagiri.

2. The case of the prosecution is that the deceased Regina has already been given in marriage to one Ravi and subsequently deserted him and after some time, the deceased has married the accused by name Elumalai. The accused has very often used to demand money without doing any work and finally he directed the deceased to get money from Self Help Group. Since the deceased refused to concede the demand made by the accused, the accused has made remark towards the deceased "to die" and due to overtacts of the accused, on 01.08.2009, at about 4.30 p.m., in the house of the accused, the deceased has poured kerosene on her person and set fire on her and immediately after occurrence, she has been admitted in Government Hospital, Krishnagiri, wherein, she has given a statement and the same has been registered in Crime No.307/2009 and after some time, she has passed away. The statement alleged to have been given by the deceased has been marked as Ex.P.2.

3. On receipt of Ex.P.2, the Investigating Officer viz., P.W.14 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, doctor by name Paramasivam (P.W.11) has conducted post mortem and he found the following external and internal injuries:-

"Appearances found at the Post-Mortem:

A body of a female aged about 30 years kept on its back with the arms by the side of the body. Mouth partially opened. Eyes closed. Tongue inside the mouth. Injuries:- About 95% deep burns involved all parts of the body. No hair in the body. More than 70% of the skin peeled off from the body. No other External Injuries made out.

Internal Examination: Hyoid intact. Ribs, sternum intact. All internal organs Normal size, pale. Brain, skull - intact. "

The Post Mortem Report has been marked as Ex.P.5. The Investigating Officer, after completing investigation has laid a final report on the file of Judicial Magistrate Court, Pochampalli and the same has been taken on file in P.R.C.No.1/2010.

4. The Judicial Magistrate, Pochampalli, after considering the facts that the offences alleged to have been committed by the accused is triable by sessions court, has committed the case to the trial court and the same has been taken on file in Sessions Case No.179/2014.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents has framed a charge against the accused under Section 306 of the Indian Penal Code (hereinafter called as "IPC") and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 14 have been examined and Exhibits P.1 to P.11 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and also after evaluating the available evidence on record has found the accused guilty under Section 306 of the IPC and sentenced him to undergo ten years rigorous imprisonment and also imposed a fine of

Rs.10,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present criminal appeal has been preferred at the instance of the accused as appellant.

9. The crux of the case of the prosecution is that the deceased Regina has been given in marriage to one Ravi and subsequently deserted him, after some time, she married the accused by name Elumalai. The accused has not done any work and very often, gone to his mother's house and due to that a despair has been in existence between the accused and deceased and on the date of occurrence, the accused has demanded money from the deceased and ultimately directed her to get money from Self Help Group and since the deceased has refused to concede the demand made by the accused, he remarked towards the deceased "to die" and due to that the deceased has poured kerosene on her body and subsequently, set fire and immediately after occurrence, she has been admitted in Government Hospital, Krishnagiri and after some time, she succumbed to injuries.

10. The learned counsel appearing for the appellant/accused has sparingly contended that the words alleged to have been uttered by the accused would not be sufficient so as to derive the deceased to commit suicide by way of pouring kerosene on her and subsequently, set fire and the trial court, without considering the lack of evidence, has erroneously found the accused guilty under Section 306 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial court are liable to be interfered with.

11. Per contra, the learned Additional Public Prosecutor has contended that the then injured (deceased) herself has given a statement, wherein, sufficient materials are available so as to constitute the offence punishable under Section 306 of the Indian Penal Code and since the statement of the then injured (deceased) has been registered, the same can be treated as a dying declaration as per the provision of Section 32(1) of the Indian Evidence Act and apart from the statement given by the then injured (deceased), enormous oral evidence is available on the side of the prosecution and the trial court after considering the cumulative effect available on the side of the prosecution has rightly invited the conviction and sentence against the accused and the same do not require interference.

12. As adverted to earlier, the entire case of the prosecution is that the accused has directed the deceased "to die" since she has not been complied with the demand made by him and under the said circumstances, the court has to look into as to whether the words alleged to have been used by the accused would be sufficient for coming to a conclusion that the accused has committed an offence punishable under Section 306 of the Indian Penal Code.

13. The learned counsel appearing for the appellant/accused has befittingly drawn the attention of this Court to the decision of the Honourable Supreme Court reported in 1995 Supreme Court Cases (Cr1) 943 [SWAMY PRAHALADDAS VS. STATE OF M.P., AND ANOTHER], wherein, a similar issue has been dealt with by the Honourable Supreme Court and ultimately found that the mere words "to go and die" would not be sufficient to constitute the offence punishable under Section 306 of the Indian Penal Code.

14. In the instant case, as narrated earlier, the accused is in the habit of demanding money from the deceased. On the date of occurrence, as usual, the accused has demanded money from the deceased and finally directed her to go and fetch money from Self Help Group and since the deceased has refused to fulfil the demand made by the accused, he simply uttered "to die".

15. Further, it is seen from Ex.P.2 that even prior to uttering of such words by the accused, the deceased has directed her son by name Vignesh, who has been examined as P.W.1 to get Petrol from a Petrol Bunk and accordingly, he brought the same. Therefore, it is quite clear that the deceased has already made up her mind to commit suicide. Further, as per the dictum given by the Honourable Supreme Court, the words alleged to have been uttered by the accused would not be sufficient so as to derive the deceased to commit suicide in the manner mentioned in Ex.P.2. Therefore, viewing from any angle, the prosecution has not at all adduced evidence so as to constitute the offence punishable under Section 306 of the IPC. The trial court, without considering the nature of words alleged to have been uttered by the accused towards the deceased and also without considering the lack of evidence has erroneously invited the conviction and sentence against the appellant/accused. In view of the foregoing enunciation of both factual and legal aspects, this court has found considerable force in the contentions put forth on the side of the appellant/accused and altogether, the present criminal appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.179/2014 by the Sessions Court, Fast Track Mahila Court, Krishnagiri are set aside. The appellant/accused is acquitted. Fine amount, if any paid by him is ordered to be refunded.

nvsri

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police
Pochampalli Police Station
Krishnagiri District
 2. The Sessions Judge,
Fast Track Mahila Court, Krishnagiri,
Krishnagiri District
 3. The Judicial Magistrate,
Pochampalli.
 4. The Superintendent,
Central Prison, Vellore.
 5. The Chief Judicial Magistrate
Krishnagiri District (for information)
 6. The District Collector,
Krishnagiri District, Krishnagiri.
 7. The Public Prosecutor,
High Court, Madras.
 8. The Section Officer,
Criminal Section,
High Court, Madras.
- + 1 cc to Mr.E.Kannadasan, Advocate SR 52472

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