

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.07.2015

Pronounced on : 26.11.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

CRL.A.No.755 of 2013

Anilkumar Appellant / Accused

Vs

The Station House Officer
D Nagar Police Station,
Pondicherry.

.....Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 17.09.2013 made in S.C.No.62 of 2011 on the file of the learned II Additional Sessions Judge, Puducherry.

For Appellant : Mr.Arun Anbumani
for Mr.C.A.Diwakar

For Respondent : Mr.M.R.Thangavel
APP (Puducherry)

JUDGMENT

(Judgment of the Court was delivered by S.TAMILVANAN, J)

The criminal appeal has been preferred against the conviction and sentence imposed by Judgment, dated 17.09.2013 made in S.C.No.62 of 2011 on the file of the learned II Additional Sessions Judge, Puducherry.

2. It is seen that the appellant is the sole accused and he was convicted under Section 302 IPC and sentenced to undergo life imprisonment and also imposed a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment for one year.

3. As per the prosecution case, the Station House Officer, D'Nagar Police Station, Puducherry laid a report against the accused person, that on 01.05.2010 at about 9.30 hours, at No.4, Tagore Street, Kathirkamam, Puducherry, the accused poured kerosene on his wife, deceased Seethadevi and lit fire and caused her death, as she had often quarrelled with the accused / her husband as regard his illicit intimacy with another lady, with the knowledge, such injuries would be likely to cause death or would be sufficient in the ordinary course of nature to cause death and thereby the accused is liable to be punished u/s. 302 IPC. Subsequently, to the marriage with the deceased, in the course of same transaction, the accused made unlawful demand of dowry such as two wheeler and money in connection with his marriage with the deceased wife and thereby the accused is liable to be punished under Section 4 of Dowry Prohibition Act, 1961.

4. It is seen that originally the case was taken on file by the Judicial Magistrate-II, Puducherry as PRC No.8/2011 and after furnishing the copies u/s. 207 Cr.P.C to the accused and as the offences are triable by the Court of Sessions, the case was committed u/s. 209 Cr.P.C to the Court of Principal Sessions Judge, Puducherry and on receipt of the same, the Principal Sessions Judge, Puducherry taken up the case on file as S.C.No.62/2011 and made over the same for trial.

5. On appearance of the accused before the trial court, after satisfying that the accused had been furnished with free copies of the prosecution documents as required u/s. 207 Cr.P.C., charges u/s. 302 IPC and 4 of Dowry Prohibition Act, 1961 were framed and the same were read over and explained to the accused. When the accused was questioned with regard to the substance of the charges, he denied the same, pleaded not guilty and claimed to be tried.

6. On the side of the prosecution, P.W.s.1 to 24 were examined and Exs.P.1 to P.25 and M.Os.1 and 2 were marked. On the side of the defence, neither oral nor documentary evidence was adduced.

7. After trial, the appellant / accused was convicted under Section 302 IPC and sentenced to undergo life imprisonment and also directed to pay a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment for one year. The accused is found not guilty under Section 4 of Dowry Prohibition Act and he is

acquitted from the said charge. Aggrieved by the conviction under Section 302 IPC, this Criminal Appeal has been preferred by the appellant / accused.

8. Mr.Arun Anbumani, learned counsel appearing for the appellant submits that the prosecution has not established the guilt against the appellant / accused beyond reasonable doubt, however, as per the impugned Judgment, the appellant / accused has been convicted under Section 302 IPC and sentenced to undergo life imprisonment and also imposed a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment for one year. He drew the attention of this Court to the evidence of P.W.4, who is none other than the mother of the deceased. She has admitted in the cross-examination that the deceased Seethadevi, daughter of the witness had attempted to commit suicide, when she was residing with her mother (P.W.4) in Darjeeling. Learned counsel for the appellant submitted that the deceased Seethadevi had attempted to commit suicide and the evidence available on record would also clearly show that the deceased has committed suicide, on account of her own emotion, however, the case has been foisted against the appellant. It was argued on the side of the appellant that the deceased had habitually attempting to commit suicide twice and she further submitted that at the time of pouring kerosene and lit fire, the appellant / accused was not at all present and he further drew the attention of the evidence of only eye witness, P.W.9.

9. Learned counsel for the appellant further contended that based on the dying declaration given by the deceased, the appellant / accused was convicted by the Court below under Section 302 IPC and contended that there were three dying declarations given by the deceased. The first dying declaration is Ex.P.3, said to have been given by the deceased to P.W.11, Dr.Hemachandran at about 10.17 am on 01.05.2010. Ex.P.3 is the Medical Examination Report of JIPMER Hospital, Pondicherry. P.W.11 has recorded in the said Ex.P.3 that the patient was brought by her husband (AnilKumar) with an allegation that the Homicidal burns were caused by her husband using kerosene. However, in the cross-examination, P.W.11 has clearly deposed that he does not remember the language, in which the deceased told him for recording the statement. The second dying declaration is Ex.P.20, the statement of the deceased said to have been given to P.W.22, Balamuguran, S.I. of Police at 12.00 Noon on 01.05.2010. In the said Ex.P.20, there is an endorsement by one Dr.Kapil, stating that patient conscious and the statement was recorded by him. However, the said Doctor has not

been examined for the reasons best known to the prosecution. The third dying declaration is Ex.P.14, said to have been given by the deceased to P.W.19, Mr.M.Sridhar, the then Judicial Magistrate, Pondicherry at 01.45 pm on 01.05.2010 and the dying declaration was recorded by P.W.19 with the help of one Dr.Karthik Raichurkar. The Doctor has certified that "The patient is conscious, oriented and fit to give statement". But the said Doctor has not been examined by the prosecution.

10. Learned counsel for the appellant further contended that the dying declaration cannot be accepted, since dying declaration was recorded only in English and Tamil, since admittedly the deceased was not conversant with the said languages and the evidence shows that the deceased knew a language called Tetti Methili, that is the language being spoken by people in Bihar.

11. There is no legally acceptable evidence to rely on the confession, as there could be possibility of improper or erroneous translation of the alleged dying declaration given by the deceased in English from Tetti Methili language. It is further contended that the alleged occurrence had taken place in the morning hours, while the appellant / accused started from his residence along with P.W.9 to attend his regular work as carpenter. The evidence of P.W.9 would show that the deceased used to quarrel with her husband unreasonably and prior to the occurrence also, there was a wordy quarrel between the deceased and the appellant / accused. On the day of occurrence, P.W.9 came to the house of the accused and asked him to wait for five minutes, at that time, Seethadevi (accused) quarrelled with the accused. Hence, he took the accused away from there. After some time, they heard hue and cry and saw the deceased came running out of the house engulfed with fire. Subsequently, she was taken to the hospital in an Auto, only by the appellant / accused and others. In the AR copy itself, the same is recorded, which shows that the appellant / accused was interested in saving her life and he was no way responsible for the burn injuries sustained by the deceased.

12. According to the learned counsel for the appellant, the deceased has stated in her dying declaration that her husband, the appellant / accused had accompanied her to the hospital, however, implicated the person, as if he poured the kerosene and set fire, which would show that she was interested to implicate her husband / appellant and getting him punishment, however, the evidence would show that the deceased had committed only

suicide. However, the Court below has convicted the appellant / accused under Section 302 IPC and he has also pointed out some suspicious circumstances available in the evidence and materials produced by the prosecution.

13. In support of his contention, the learned counsel appearing for the appellant relied on the following decisions :

1. Kanchy Komuramma v. State of A.P., 1995 Supp (4) SCC 118.
2. Mehiboobsab Abbasabi Nadaf v. State of Karnataka, 2007 (13) SCC 112.
3. Lakshmi Singh v. State of Bihar, (1976) 4 ACC 394.

14. In Kanchy Komuramma v. State of A.P, reported in 1995 Supp (4) SCC 118, the Hon'ble Supreme Court has held as follows :

"11. The prosecution for reasons best known to it did not examine Dr.H.Rao, who is alleged to have made the endorsement on Ex.P.7 that "the patient was in a fit state of mind to depose". No other witness was examined to prove the certificate of the doctor either. The non-production of Dr.H.Rao to prove his certificate and subject himself to be cross-examined by the appellants, when considered in the light of the testimony of the mother of the deceased, P.W.1, who specifically stated that the condition of the patient was not good and that she was not in a fit condition, creates a doubt in our minds as to whether the patient was actually in a proper mental condition to make a consciously truthful statement. This infirmity renders it unsafe to rely on the dying declaration. As a matter of fact, the failure of the prosecution to establish that the deceased before she made the dying declaration was in proper mental condition to make the dying declaration detracts materially from the reliability of the dying declaration and it would not be safe to rely upon it. That the dying declaration has been recorded by a Judicial Magistrate by itself is not a proof of truthfulness of the dying declaration, which is order to earn acceptability has still to pass the test of scrutiny of the court. There are certain safeguards, which must be observed by a Magistrate when requested to record a dying declaration. The Magistrate before recording

the dying declaration must satisfy himself that the deceased is in a proper mental state to make the statement. He must record the satisfaction before recording the dying declaration. He must also obtain the opinion of the doctor, if one is available, about the fitness of the patient to make a statement and the prosecution must prove that opinion at the trial in the manner known to law..."

15. In *Mehiboobsab Abbasabi Nadaf v. State of Karnataka*, reported in (2007) 13 SCC 112, the Hon'ble Supreme Court has held that consistency in the dying declaration is the relevant factor for placing full reliance thereupon.

16. In *Lakshmi Singh v. State of Bihar*, reported in (1976) 4 SCC 394, the Hon'ble Apex Court has held as follows:

"It is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case, which is sufficient to enable the Court to reject the prosecution version."

17. In the instant case, the deceased has given a statement that stated that she was brought to the hospital by the neighbours due to the smell of kerosene. However, the case of the prosecution is that it was the appellant who brought the deceased and admitted her in the hospital. It is seen that P.W.5, P.W.6 and P.W.9 have categorically deposed that it was the appellant, who took the deceased to the hospital. Further, the deceased has stated that at the time of occurrence, she began to scream but the appellant closed her mouth with pillow. However, it is seen that these aspects have not been stated by the deceased, either in Ex.P.3 and E.P.20, which are her earlier dying declarations. Further, had it been true that the appellant closed her mouth with pillow, while the deceased was burning and screaming, the appellant should also have sustained burn injuries, however, there was no injuries on the appellant. The alleged pillow used to close the mouth of the deceased was also not recovered by the prosecution.

18. Learned counsel appearing for the appellant submitted that as per the post mortem certificate, the deceased had suffered 90% burn injuries and her tongue was behind the jaws,

as per the post mortem certificate, which would indicate that she could not have spoken in the said circumstances. Hence, the non-examination of the Doctor is fatal to the prosecution.

19. The medical evidence of the Doctor, P.W.11, Dr.Hemachandran, who gave first aid treatment found that burn injuries are found all over the body of the deceased from head to toe. The same has been marked as Ex.P.3.

20. According to the post mortem report, the deceased suffered nearly 82% burn injuries. The said post mortem report has been marked as Ex.P.11, wherein the injuries were stated as follows:

Injuries (Antemortem) : Superficial to deep burns are present over the scalp, face, neck the entire trunk including both axillae and including the external genitalia, both upper limbs excluding the finger tips, and both the thighs and upper part of both the legs :

"Distribution : 1. Head and neck = 9%
2. Both the upper limbs = 16%
3. Entire trunk = 36%
4. Both the thighs and upper part of both the legs = 21%
Area of the skin involved by burns was 82%."

21. It is not in dispute that the deceased, Seethadevi, died due to severe burn injuries on 01.05.2010. Whether the death was caused by the appellant / accused, by pouring kerosene and setting fire or the deceased herself had poured kerosene and set fire on her own, when the appellant / accused was out of the house and committed suicide is the pertinent question to be decided, based on the evidence available on record.

22. The only eye witness to the occurrence is P.W.9, who has stated in his evidence that there had been wordy quarrel between the appellant the deceased several times, prior to the occurrence. On the date of occurrence, when P.W.9 went to the house of the accused, he asked him to wait for five minutes and at that time, Seethadevi quarrelled with the accused. Then P.W.9, took the accused away from there. After some time, Seethadevi come out of the house with fire on her body. So P.W.9 and the appellant / accused went there and put off the fire. The neighbour brought an Auto and the appellant and others put Seethadevi in the auto and took her to the Hospital. Hence the evidence of P.W.9 did not support the prosecution case against

the appellant / accused. Admittedly, as per the AR copy given, the appellant / accused accompanied his wife.

23. Therefore, only the evidence available to support the prosecution case is the dying declaration and there are three dying declarations, as argued by the learned counsel appearing for the appellant. It is not in dispute that the dying declaration is a valid piece of evidence. However, in this case, the Doctors, have not been examined to establish whether the deceased was conscious at the time of giving statement, for which there is no satisfactory explanation. The evidence of P.W.9, eye witness is quite natural and reliable. The another vital aspect is that the deceased attempted twice for committing suicide, one in Darjeeling and again which she was staying with her own mother, P.W.4. The dying declarations, Exs.P.3, P.14 and P.20 were written in English and Tamil, though the deceased was conversant only in Tetti Methili, that is the language being spoken by people in Bihar. Hence. the correctness of the translation is also doubtful.

24. On the aforesaid facts and circumstances, in the light of the decisions of the Hon'ble Supreme Court and this Court, we are of the considered view that the prosecution has not established the alleged guilt against the appellant / accused beyond reasonable doubt. Therefore, we find it just and reasonable to allow the appeal.

25. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed in Judgment, dated 17.09.2013 made in S.C.No.62 of 2011 on the file of the learned II Additional Sessions Judge, Puducherry is set aside. The appellant is acquitted of all charges levelled against him and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. The fine amount, if any paid by the appellant already, shall be refunded to the appellant. The bail bond if any, executed by the appellant shall stand cancelled.

Sd/-

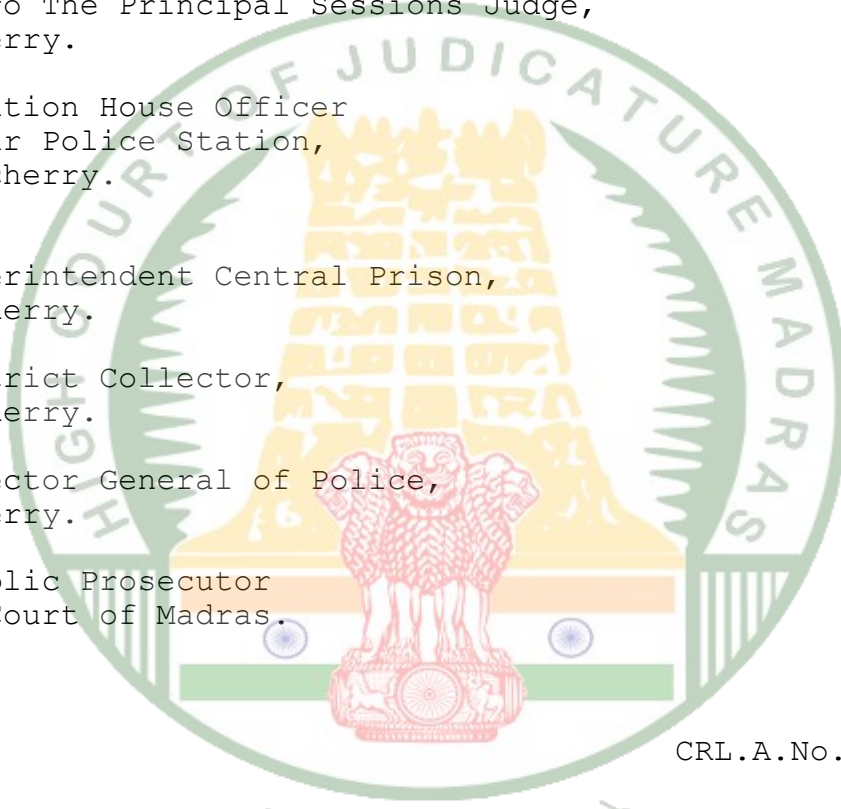
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

- 1.The Judicial Magistrate II,
Puducherry.
- 2.-Do-Thro The Chief Judicial Magistrate,
Pondicherry.
- 3.The II Additional Sessions Judge,
Puducherry.
- 4.-Do- thro The Principal Sessions Judge,
Puducherry.
5. The Station House Officer
D Nagar Police Station,
Pondicherry.
- 6.The Superintendent Central Prison,
Pondicherry.
- 7.The District Collector,
Pondicherry.
- 8.The Director General of Police,
Puducherry.
9. The Public Prosecutor
High Court of Madras.



CRL.A.No.755 of 2013

tej[col]
srg 10/12/2015

सत्यमेव जयते

WEB COPY