

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.135 of 2014

Babu

... Appellant

-Vs-

Inspector of Police
P5 MKB Nagar Police Station
Chennai

... Respondent

This Criminal Appeal has been preferred to set aside the conviction imposed in judgment dated 11.09.2013 made in S.C.No.41 of 2012 on the file of the Sessions Judge, Mahila Court, Chennai, by allowing this appeal.

For Appellant : Mr.T.K.S.Bharathy Anandraj

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.41 of 2012 on the file of the learned Sessions Judge, Mahila Court, Chennai. He stood charged for offence under Section 302 IPC. By judgment dated 11.09.2013, the Trial Court convicted him under both the charges and sentenced him to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for three months for the offence under Section 498(A) IPC; and to undergo imprisonment for life and to pay a fine of Rs.10,000/, in default to undergo simple imprisonment for six months for the offence under Section 302 IPC. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

The accused is the husband of the deceased Ms.Dhanalakshmi. The marriage between them was celebrated on 13.07.2001. After their marriage, they were living together as husband and wife. Though initially, they were leading a peaceful marital life with all joy, it became sour when the accused, in due course of time started taking drinks; began to return home fully drunk and developed quarrel with the deceased. The deceased was thus so much depressed. While so, on 09.06.2007, at about 10.00 a.m., when the accused had just returned to the house, the deceased questioned him as to where he had gone. The accused replied that he had decided to do away with the deceased since she was not willing to transfer the house in his name and that her parents had not sufficiently given jewellery as dowry. So saying, he poured kerosene on the body of the deceased at his house and set fire. The occurrence was not witnessed by anyone. While in flames, the deceased ran out of the house and cried for help. The neighbours put out the fire.

3. P.W.1. is the mother of the deceased. She is also residing somewhere in the same locality. On the date of occurrence, around 10.00 a.m., P.W.3., Manonmani, a neighbour of the deceased rushed to the house of P.W.1 and informed her that the deceased had been set on fire. P.W.1 immediately rushed to the house of the deceased. She found the deceased with burn injuries. When she enquired the deceased, as to how she sustained burn injuries, she told her that her husband namely, the accused poured kerosene and set fire. The deceased was taken to Balaji Nursing Home at MKB Nagar, Chennai.

4. P.W.9., Dr.K.Rajkumar examined her. The deceased told him that due to bursting of kerosene stove, she caught fire and thus sustained burn injuries. He gave first aid treatment. From there, the deceased was taken to Kilpauk Medical College hospital. On 09.06.2007, at about 6.15 p.m., P.W.10 examined the deceased in the said hospital. At that time, the deceased told the Doctor that her husband poured kerosene and set fire on her at 9.00 a.m., at her house. He found extensive burn injuries on her body. Due intimation regarding the admission of the deceased in the hospital was sent to the Police as well as to the Magistrate.

5. P.W.13., the then XXI Metropolitan Magistrate on getting intimation from the hospital, rushed to the Kilpauk Medical College Hospital at 11.35 p.m., on 09.06.2007. The Doctor, who attended the deceased gave a certificate that the deceased was in a fit state of mind and conscious. P.W.13 made certain queries and from the answers given by the deceased and from the opinion of the Doctor, he got satisfied that the deceased was in

a fit state of mind to make a dying declaration. Thereafter, he recorded the dying declaration of the deceased, vide Ex.P6.

6. P.W.15, the then Sub-Inspector of Police, on receipt of the intimation from the hospital, went to the Kilpauk Medical Hospital and recorded the statement of the deceased on 09.06.2007. Ex.P8 is the statement of the deceased. On returning to the Police Station, at 10.30 p.m. she registered a case in Crime No.278 of 2007 for offence under Section 307 IPC. Ex.P9 is the First Information Report. She forwarded both the documents to the Court, which were received by the learned Judicial Magistrate at 05.00 p.m. on 10.06.2007.

7. P.W.15 continued the investigation and went to the place of occurrence at 8.30 a.m., on 10.06.2007 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. She examined a few more witness and recorded their statements. On the same day, at 11.30 a.m., she arrested the accused near Mullai Nagar Bus stand in the presence of same witnesses. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place, where he had hidden the kerosene bottle. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the Kerosene Bottle (M.O.1) and a match box (M.O.2). She recovered the same under a Mahazar. On returning to the Police Station, she forwarded the accused to Court, for judicial remand.

8. On 12.06.2007, at 6.00 a.m., the deceased succumbed to the injuries in the hospital. On receipt of the death intimation, P.W.16 altered the case into one under Section 304 (b) IPC. The investigation was thereafter taken over by P.W.17. On the same day, between 3.30 and 5.30 p.m., she conducted inquest on the body of the deceased and forwarded the body for post mortem. P.W.12 - Dr.Kuppusamy, conducted autopsy on the body of the deceased at Kilpauk Medical College Hospital on 13.06.2007 at 2.45 p.m. He found the following injuries:-

"External injuries: Case of 37% burns. Superficial burned injuries with infection seen over the both lips chin front of neck chest and abdomen, front and back of both fore arms and front of both thighs. No other wound or injury seen."

He found 37% burn injuries on the body of the deceased. Ex.P5 is the Post Mortem Certificate. He opined that the death was due to burn injuries.

9. P.W.17 continued the investigation. She collected medical records, examined the doctors and recorded the statement. On completing the investigation, she laid charge sheet against the accused under Sections 498(A) and 302 IPC.

10. Based on the above materials, the trial Court framed charges as detailed in the first para of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 15 documents were exhibited, besides 2 Material Objects were marked.

11. Out of the said witnesses, P.W.1, the mother of the deceased has stated that P.W.3 informed her about the occurrence and when she went to the house of the deceased, she found the deceased with burn injuries. When she enquired, the deceased told her that her husband poured kerosene and set fire. P.W.2 is the sister of the deceased. She has spoken about the frequent quarrels between the accused and the deceased. She would further state that on the date of occurrence, she heard that there was quarrel between the accused and the deceased. When she went to the house of the deceased, she found the deceased with burn injuries. When she enquired, the deceased told her that her husband poured kerosene and set fire. P.W.3 is the neighbour of the deceased. She has stated that at the time of occurrence, on hearing the alarm raised by the deceased, when she rushed towards the house of the deceased, she found the deceased rushing out of the house with flames. Along with others, she put out the fire. The accused also rushed along with them towards the house of the deceased and put out the fire. P.W.4 is yet another neighbour. She has stated that the deceased set fire to herself as she was depressed that her husband had become drunkard. P.W.5 is yet another neighbour, who has stated that the deceased told her that with a view to threaten the accused, the deceased poured kerosene and set fire to herself. This witness has been treated as hostile by the prosecution. P.W.6 is yet another neighbour, who has stated that when she went to the hospital, the deceased told her that she set fire to herself. P.W.7 has turned hostile and he did not support the case of the prosecution in any manner. P.W.8 has spoken about the preparation of the Observation Mahazar and rough sketch. P.W.9 - Dr.K.Rajkumar, has stated that on 09.06.2007 at 10.45 a.m., he examined the deceased at Balaji Nursing Home and at that time the deceased told him that due to bursting of stove, she caught fire and sustained burn injuries. P.W.10 has stated that when he examined the deceased at Kilpauk Government hospital at 6.15 p.m. on 09.06.2007, the deceased for the first time told him that she had sustained burn injuries, as her husband had poured kerosene and set fire. P.W.11 has stated that the deceased succumbed to injuries at 6.00 am. on

12.06.2007. P.W.12 has spoken about the Post Mortem conducted and his Final Opinion regarding the cause of death. P.W.13, the learned Judicial Magistrate has spoken about the Dying Declaration recorded, where the deceased told him that it was her husband, who poured kerosene and set fire. P.W.14 has spoken about the treatment given to the deceased and he has stated that he certified to the Magistrate that the deceased was conscious and only in his presence, dying Declaration was recorded. P.W.15 has spoken about the statement made by the deceased and upon which case was registered and investigation done till the demise of the deceased on 12.06.2007. P.Ws.16 and 17 have spoken about the further investigation and the final report filed.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, he denied the same as false. However, he did not choose to examine any witness on his side nor marked any document in his favour.

13. Having considered all the above, the trial Court convicted the accused on both the charges. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

14. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

15. This is a case where there is no eye witness account. The prosecution relies only on the multiple dying declarations made by the deceased. The earliest dying declarations were made to neighbours of the deceased viz., P.W.3 to P.W.6. They are the witnesses, to whom the deceased told that with a view to threaten the accused, she herself poured kerosene and set fire and that is how she sustained injuries. Thus the earliest dying declarations were made by the deceased to the above witnesses.

16. Next comes the oral dying declaration made by the deceased to P.Ws.1 and 2. P.W.1 is the mother of the deceased and P.W.2 is the sister of the deceased. According to P.W.1, P.W.3 rushed to her house and informed that the deceased was found with burn injuries. Only thereafter, P.Ws.1 and 2 rushed to the house of the deceased. It is their evidence that when they enquired the deceased, she told them that it was the accused who poured kerosene and set fire. Thus in the second dying declaration, the deceased had said that injuries were caused by the accused.

17. The third dying declaration is the one which was made to P.W.9 Dr.K.Rajkumar at Balaji Nursing Home. He has stated that when he examined the deceased at 10.45 a.m. on 09.06.2007, she told that due to bursting of kerosene stove, she caught fire. This dying declaration is totally contrary to the earlier dying declarations. When the deceased was examined by P.W.10, at Kilpauk Medical College Hospital at 6.15 p.m., on 09.06.2007, she told that it was her husband, who poured kerosene and set fire. There are two other dying declarations made to the authorities. P.W.13, the learned Metropolitan Magistrate recorded the dying declaration at 11.55 p.m. on 09.06.2007, wherein, it was again reiterated that it was her husband, who poured kerosene and set fire. Similar statement has been made to P.W.15 also.

18. Thus in this case, there are multiple dying declarations making three different versions. The prosecution is not able to establish as to which version is true. The earliest dying declarations have been spoken by neighbours, who have got no adverse interest either against the accused or the deceased. They have stated that at the earliest point of time when they rushed to the house of the deceased and enquired her, she told that she herself poured kerosene and set fire. As a matter of fact, P.W.3 has further stated that when she rushed on hearing the alarm raised, the accused also rushed along with her to his house and on seeing his wife in flames, he also put out the fire. The case of the prosecution is that after setting fire to the deceased inside the house, the accused fled away from the scene of occurrence, whereas, this witness has stated that the accused rushed towards the house of the deceased and put out the fire.

19. Thus we are inclined to give weightage to the earliest Dying Declarations, as the subsequent dying declarations might have been given due to tutoring. Yet another dying declaration given to the Doctor is to the effect that the deceased told that while cooking, due to bursting of kerosene stove, she sustained injuries. Thus, there is no consistency between these dying declarations. The earliest dying declarations are consistent with the innocence of the accused. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant/accused is entitled to acquittal.

20. The Criminal Appeal is allowed and the conviction and sentence for the offence u/s.302 IPC imposed on the appellant by the Trial Court in SC.No.41 of 2012 are hereby set aside. The

appellant is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Inspector of Police,
P5 MKB Nagar Police Station,
Chennai.
2. Sessions Judge, Mahila Court,
Chennai.
3. The Public Prosecutor,
High Court, Chennai.
4. The XXl Metropolitan Magistrate,
Egmore, Chennai-8.
5. -Do- Thro the Chief Metropotan Magistrate,
Egmore, Chennai-8.
6. The Principal Sessions Judge,
chennai.
7. The Superintendent of Prison,
Central Prison-II, Puzhal, Chennai.
8. The Director of General of Police,
Mylapore, Chennai-4.
9. The District Collector,
Chennai.

+1cc to M/S.T.K.S.Bharathy, Anandraj, Advocate Sr.29600

Cr1.A.No.135 of 2014

svi[co]
srg 24/06/2016