

Bail Slip

That the Appellant herein / Sole Accused viz., Yesupillai, S/o.Moses was directed to be released on bail as per order dt.28.04.2015 made in M.P.No.1/15 in Crl.A.155/14 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.155 of 2014

Yesupillai

..Appellant/ Accused

..Vs..

State by
Inspector of Police,
C-4, Pennalurpet Police Station,
Tiruvallur District
(Crime No.167 of 2010)

... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Tiruvallur in S.C.No.232 of 2012 dated 12.02.2014.

For Appellant : Mr.A.Selvendiren
Legal Aid Counsel

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.Bharathidasan, J.]

The appellant is the sole accused in S.C.No.232 of 2012 on the file of the learned Principal Sessions Judge, Tiruvallur. He stood charged for an offence punishable under Section 302 of IPC. By judgment dated 12.02.2014, the trial court convicted the accused for the offence under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo six months rigorous imprisonment. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Sivagami alias Amulu. The deceased was married to the accused 10 years prior to the occurrence and two children born to them out of the said wedlock. The accused is a drunkard and he had frequent quarrel with the deceased, demanding money. On 19.05.2010 at about 4.00 p.m, the accused demanded money for consumption of liquor. But, the deceased declined to give money to the accused. Hence, there was a quarrel between the deceased and the accused. Immediately, the accused took the kerosene from the pump stove, poured the same on the deceased and set fire to her. The deceased fell down nude with burn injuries. The deceased raised alarm and on hearing the same, the neighbours and relatives one Mr. Bhaskar (P.W.7) and her aunt Tmt.Mani (P.W.8) came there. Immediately, she was taken to the hospital and admitted in the Government Kilpauk Medical Hospital, Chennai. P.W.10 Doctor working in the hospital admitted the deceased. At that time, the deceased told him that the accused poured kerosene and set fire to her, on account of quarrel. The Doctor recorded the same and issued an Accident Register (Ex.P6). Then P.W.10 sent a memo to the respondent's police. A memo was also sent to the IX Metropolitan Magistrate, Saidapet for recording dying declaration. After obtaining necessary Certificate from the Doctor (P.W.16), the Judicial Magistrate recorded Dying Declaration. In the said dying declaration also, the deceased stated that her husband/the accused, demanded money for consumption of liquor and when she refused, he took kerosene from the Pump stove, poured the same on the deceased, and set her ablaze. P.W.14, the Inspector of Police, on receipt of the memo, went to the hospital and recorded the statement of the deceased (Ex.P12). Thereafter, he registered a case in Crime No.162 of 2010 under Section 302 I.P.C (Ex.P13). Then he went to the place of occurrence and prepared an Observation Mahazar (Ex.P1) and a Rough Sketch (Ex.P20). He arrested the accused on 25.10.2010 and on such arrest, he gave a voluntary confession and P.W.14 recorded the same in the presence of witnesses.

(b) Based on the disclosure statement (Ex.P15) of the accused, P.W.14 recovered a Pump stove(M.O.1) and Match box (M.O2). Then, P.W.4 recorded the statements of witnesses. On 25.05.2010, at about 9.45 p.m, the deceased succumbed to the injuries. Hence, P.W.14 altered the provisions of law from 307 I.P.C to 302 I.P.C. A memo was also sent to the IX Metropolitan Magistrate, Saidapet for recording dying declaration. Then, he conducted Inquest on the dead body in the presence of Panchayathars and prepared an Inquest Report (Ex.P18) and sent the dead body for Post Mortem, through P.W.11, Head Constable. P.W.12, the Doctor working in Kilpauk Medical College Hospital

conducted Post Mortem on the dead boy of the deceased and found the following injuries:-

Infected burns seen over the face, neck, chest. Both the upper limbs.

On dissection of head, neck and thorax, scalp bones and membranes intact. Brain substance is normal. C/S pale. Hyoid bone is intact. Larynx and trachea empty. Heart is normal in size. c/s clots in all four chambers stomach is empty. Liver spleen and both kidneys normal in size. C/S pale intestines contains brownish Bladder is empty uterus normal in size c/s. Spine and pelvis intact and normal.

Ex.P7 is the postmortem certificate. P.W.12 gave opinion that the deceased would appear to have died of complications of burns (septicaemia).

(c) P.W.14, Inspector of Police, enquired some more witnesses and recorded the statement. Then the investigation was taken over by P.W.15 examined the Doctor who conducted post mortem and other witnesses and recorded their statements. After completion of enquiry, he filed the charge sheet, on 2.9.2010.

3. Based on the above materials, the Trial Court framed alone charge as detailed in the first paragraph of this Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 20 documents and 3 material objects were marked.

4. Out of said witnesses, P.Ws.1 to 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10 is the Doctor working in Kilpauk Medical Hospital. He has stated that he admitted the deceased in the hospital and issued Accident Register (Ex.P6). He has further stated that the deceased told him that her husband / accused only poured kerosene and set fire to her. P.W.12 is the Doctor, who conducted Postmortem on the dead body and issued postmortem certificate (Ex.P9). P.W.13 is the then Judicial Magistrate, IX Metropolitan Court, Saidapet, who recorded the dying declaration of the deceased. It is his evidence that the deceased told that only the accused poured kerosene and set fire to her. P.W.14 is the Inspector of Police, who registered the F.I.R, conducted investigation, arrested the accused and recovered material objects. P.W.15 is another Inspector of Police who continued the investigation and after completion of investigation, filed the charge sheet. P.W.16 is the Doctor who issued Certificate at the time of recording the dying declaration that the deceased was in a fit state of mind to give dying declaration.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defense was a total denial. However, he did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted the accused and sentenced him as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. All the material witnesses, P.Ws.1 to 9, were turned hostile. There are three dying declarations. At the time of admitting the deceased in the hospital, she has stated to P.W.10, Doctor that her husband poured kerosene and set fire to her. P.W.10 has recorded the same in Ex.P.6, Accident Register issued by him.

9. Then, on receipt of a memo from the hospital, P.W.14, the Inspector of Police, has reported to the hospital and recorded her statement, wherein she has stated that, on 19.05.2010 at about 3.30p.m, the accused demanded money from her for purchase of liquor and she refused, he quarreled with her and hence, he had taken the kerosene from the pump stove and poured the same on her and set her on fire. This is the second dying declaration. The third dying declaration is the one which was made to P.W.13, the Judicial Magistrate. P.W.13, on being satisfied that the deceased was in good conscious and also in a fit state of mind to make dying declaration and after obtaining a certificate to the said effect from P.W.16, the Doctor, working in Kilpauk Medical Hospital, and recorded the statement of the deceased in which she has stated that on the date of occurrence, the accused demanded money and when she refused to give the same, the accused took kerosene from the pump stove, poured the same on her and set her on fire. In all these three dying declarations, the deceased had consistently stated that it was this accused who poured kerosene on her and set fire to her. There is no contradiction between these three dying declarations. We do not find any circumstance which may even remotely give an inference that the deceased would have been tutored. Therefore, we do not find any reason to reject these multiple dying declarations where the deceased had consistently stated that it was this accused who poured kerosene and set fire to the deceased. In the instant case, we are fully satisfied that the dying declarations are voluntarily and

consistently given by the deceased in a fit state of mind. Hence, we are of the considered opinion that the prosecution has clearly established that it was this accused who poured kerosene on the deceased and set fire to her and caused her death.

10. Now, the question is as to what was the offence that the accused has committed by the said act. As per the dying declarations, there were frequent quarrels between the accused and deceased. Further, it is in evidence that on the date of occurrence, when the accused demanded money from the deceased for consuming liquor, the deceased had refused to give the same and hence, he had taken kerosene from the pump stove and poured the same on the deceased and set her to fire. This evidence from the dying declaration would clearly go to prove that the accused was provoked by the act of the deceased is not giving money to have liquor and out of the said provocation, which was also so sudden and grave, the accused had lost his mental balance and committed the offence. This act of the accused would fall under the third limb of Section 300 IPC and it would also fall under first Exception to Section 300 IPC. Therefore, we are of the view that he is liable to be punished only for the offence under Section 304-I IPC.

11. So far as the quantum of punishment is concerned, the accused has got no bad antecedents. It is also not a premeditated murder. The occurrence was out of a sudden quarrel. Having regard to all the above circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months would meet the ends of justice.

12. In the result, the Criminal Appeal stands partly allowed. The conviction and sentence imposed on the appellant by the trial court under Section 302 IPC is set aside and instead, he is convicted under Section 304-I IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months. Fine amount already paid shall be adjusted. The period of sentence already undergone by the accused in connection with this case shall be set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Thiruvallur.
2. The Judicial Magistrate,
Uthukottai.
3. The Principal District and Sessions Judge,
Thiruvallur.
4. The Judicial Magistrate-I,
Thiruvallur.
5. -do- Thro, The Chief Judicial Magistrate,
Thiruvallur.
6. The Superintendent,
Central Prison,
Puzhal, Chennai.
7. The District Collector,
Thiruvallur.
8. The Director General of Police,
Mylapore, Chennai.
9. The Inspector of Police,
C-4, Pennalurpet Police Station,
Tiruvallur District
10. The Public Prosecutor,
High Court, Chennai.

RJ(CO)
RS(23/02/2017)

सत्यमेव जयते

Judgment in
Crl.A.No.155/2014
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