

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07..06..2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.170 of 2014

Muthupandi [A1] ... Appellant /Accused No.1

-Versus-

State Rep. by
The Inspector of Police,
B-13, Podanur Police Station,
Coimbatore District.
[Crime No.835 of 2011] ... Respondent /Complainant.

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned Principal Sessions Judge, Coimbatore Division, in S.C.No.303 of 2011 dated 17.12.2012.

For Appellant : Mr.K.S.Suresh

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

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

The appellant is the 1st Accused in S.C.No.303 of 2011 on the file of the learned Principal Sessions Judge, Coimbatore Division. The 2nd Accused was one Singam. A1 stood charged for offence under Section 302 of IPC and A2 stood charged for offence under Section 302 r/w 34 of IPC. The trial court, by judgement, dated 17.12.2012, acquitted A2, but, however, convicted A1 for offence under Section 302 of IPC and sentenced him to undergo imprisonment for life [no fine was imposed]. Challenging the above said conviction and sentence, A1 is, now, before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Sudha @ Sudharani. She was the first wife of A1, the appellant herein. He has a second wife by name Mrs.Sumathi. A1 along with the

deceased and Mrs.Sumathi was residing at No.2, Sumaithangi Thottam, Kurinchi Housing Unit, Phase-II, SIDCO, Coimbatore, for some time. The deceased had no issue. P.W.1 was his neighbour. P.W.1's wife had already died. When A1 was residing in Coimbatore along with the deceased and his second wife, he had suspicion over the fidelity of the deceased. Therefore, he shifted the family to Kodaikanal and started living there with the deceased and his second wife-Mrs.Sumathi.

3. On 10.06.2011, the deceased-Sudha had come to Sumaithangi Thottam to the house of P.W.1. P.W.1 enquired her as to why she had come from Kodaikanal. According to the case, she told that suspecting her fidelity, the accused was often beating her and he was also trying to snatch away her 7 sovereigns of gold chain. Therefore, she had returned to Sumaithangi Thottam. But, according to P.W.1, when he enquired, she told that since the cold weather in Kodaikanal was not bearable, she had come to Coimbatore to settle for some time. Thus, from 10.06.2011 onwards, the deceased was staying at the house of P.W.1.

4. It is the further case of the prosecution that on 12.06.2011, A1 and A2 came to the house of P.W.1 in a motor cycle driven by A2 and on reaching the house of P.W.1, A1 entered into the house, poured petrol on the deceased and set fire to her. Then, A1 and A2 fled away from the scene of occurrence in the motor cycle.

5. The deceased, who was in flames, cried for help. The neighbours rushed to the house and put out the fire. P.W.1 was informed of the same as he was then in his shop. Then, P.W.1 with the help of the others, took her to the hospital in an 108 Ambulance. The deceased was admitted at CMC Hospital at Coimbatore. At 06.45 a.m. on 12.06.2011, P.W.21 Dr.Bhuvana examined the deceased, who was brought by P.W.1 and the deceased was then found conscious. The deceased told P.W.21, the Doctor, that on 12.06.2011 at 05.15 a.m. her husband assaulted her, poured petrol and set her on fire. P.W.21, the Doctor, found 85% of burn injuries on the body of the deceased. She was admitted in the hospital as inpatient. Ex.P.7 is the accident register. She gave intimation to the police under Ex.P.6.

6. On receiving the intimation from the hospital about the death of the deceased, P.W.25, the then Sub Inspector of Police, Podanur Police Station, rushed to the hospital and recorded the statements of the deceased. On returning to the police station, he registered a case in Crime No.835 of 2011 under Section 307 of IPC against the accused at 09.30 a.m. The statement of the deceased is Ex.P.18 and the FIR is Ex.P.17. Then, he forwarded both the statement of the deceased-Ex.P.18 and the FIR-Ex.P.17 to the court which were received by the learned jurisdictional Magistrate at 06.00 p.m. on 12.06.2011. Thereafter, P.W.25,

handed over the case diary to the Inspector of Police for investigation.

7. The case was taken up for investigation by P.W.26. He immediately went to the place of occurrence and prepared an observation mahazar (Ex.P1) and a rough sketch (Ex.P19) in the presence of P.W.10 and another witness. He recovered the burnt articles from the place of occurrence (M.Os.1 to 10) in the presence of the same witnesses under a mahazar (Ex.P2). Then, at 12.30 p.m., he rushed to the hospital and recorded the statement of the deceased [The said statement has not been exhibited in evidence though it is a dying declaration]. At 01.30 p.m., on the same day, he received an intimation that the deceased had died in the hospital. Therefore, he altered the case into one under Section 302 of IPC and forwarded the alteration report (Ex.P5) to the court. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem. During the inquest, he examined many more witnesses and recorded their statements.

8. P.W.24, Dr.Jayasingh, conducted autopsy on the body of the deceased on 13.06.2011 at 03.15 p.m. He found extensive burn injury on the body of the deceased. There was no other injuries. The chemical analysis conducted on the visceral organs of the deceased revealed that there was no traces of poison or alcohol in any of the same. Finally, P.W.24, the Doctor, opined that the death of the deceased was due to burn injuries.

9. On 15.06.2011, at 06.30 a.m., P.W.26 arrested A2-Singam near SIDCO Bus Stop at Podanur in the presence of P.W.15 and another witness. On returning to the police station, he forwarded him to the court for judicial remand. Then, the investigation was taken over by his successor (P.W.27) on 20.06.2011. When the investigation was at the hands of P.W.27, A1 surrendered before the Judicial Magistrate No.II, Madurai. P.W.27 on getting information that the accused had surrendered he made a petition seeking custody of the accused. Accordingly, he took police custody of the accused on 23.06.2011 at 05.00 p.m. on the orders of the learned Magistrate. On the same day, between 06.30 p.m. - 07.30 p.m., the accused gave a voluntary confession in the presence of P.W.18 and another witness. In the said confession, he disclosed that he had kept the motor cycle at his house in Kodaikanal. In pursuance of the same, he took the police and the witnesses to Kodaikanal and produced the motor cycle (M.O.12) bearing Regn. No.TN 41 W 2092 from his house. P.W.27 recovered the same under a mahazar (Ex.P4) in the presence of the same witnesses. On returning to the police station, P.W.27 forwarded the accused to the court and handed over the material objects also to the court. The investigation was, thereafter, taken over by P.W.28. P.W.28 examined few more witnesses, including the official witnesses, and recorded their

statements and on completing the investigation, he laid charge sheet against the accused.

10. Based on the above materials, the trial court framed charges against A1 and A2 as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 28 witnesses were examined, 25 documents and 12 material objects were marked.

11. Out of the said witness, P.Ws.1 to 8, 11 to 13 and 17 have turned hostile and they have not supported the case of the prosecution in any manner. From their evidences what could be culled out as acceptable evidence is that the deceased was staying at the house of P.W.1 and on the day of occurrence, on hearing the distress call of the deceased, when the neighbours rushed to the house of P.W.1, the deceased was found in flames; they extinguished the fire and then took the deceased to the hospital. It could also be culled out from the evidences of the above witnesses that some time before the occurrence, A1, the deceased and the second wife of A1 were residing as neighbours of P.W.1. Since there was suspicion over the fidelity of the deceased, A1 shifted the family to Kodaikanal. P.W.9 has stated that he saw the deceased in flames. He has not stated anything else.

12. P.W.10 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and also the recovery of material objects from the place of occurrence. P.W.14, the owner of the house where the occurrence had taken place has stated that in that house P.W.1 alone was residing and his wife had already passed away. He has further stated that A1 along with the deceased and his second wife was residing in the adjacent house for some time. He has not stated anything incriminating against the accused. P.W.15 has spoken about the arrest of A2. P.W.16 has stated that on 12.06.2011, one person came to their petrol station and purchased petrol. He has also not stated anything about the accused.

13. P.W.18 has spoken about the confession made by A1 and the consequential recovery of motor cycle from his possession. P.W.19, the Head Constable, has stated that he took the dead body of the deceased Sudha @ Sudharani and identified the same to the doctor for postmortem. P.W.20 has stated that he carried the FIR and the complaint and handed over the same to the court. P.W.21 has spoken about the fact that she examined the deceased at CMC Hospital, Coimbatore on 12.06.2011 at 06.45 a.m. and at that time, the deceased was conscious. P.W.21, the Doctor, has further spoken that the deceased told that her husband attacked and set fire on her by pouring petrol at the house of Mr.Sekar.

P.W.22, the Doctor, has stated that he gave a opinion to P.W.23, the then learned Judicial Magistrate No.V, Coimbatore that the deceased was fit to make a dying declaration. P.W.23, the learned Magistrate, has stated that on intimation from the hospital, he went to CMC Hospital, Coimbatore, on 12.06.2011 at 10.00 a.m. and P.W.22 Dr.Shanthi, who was attending on the deceased, after examining her, certified that she was in a fit state of mind to make a dying declaration. He has further stated that he immediately made certain queries to the deceased and found that she was mentally fit to make dying declaration and thereafter, he recorded the dying declaration between 10.00 a.m. and 10.45 a.m. from the deceased. The said judicial dying declaration is Ex.P.11. P.W.24, the Doctor, has spoken about the autopsy conducted on the body of the deceased. P.W.25 has stated that he recorded the statement of the deceased under Ex.P.18 on 12.06.2011 and on returning to the police station, he registered a case in Crime No.835 of 2011 at 09.30 a.m. on 12.06.2011 under Ex.P.17-FIR. P.Ws.26 to 28 have spoken about the investigation done by them respectively and P.W.28 has further spoken about the filing of charge sheet against the accused.

14. When the above incriminating materials were put to A1 and A2 under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor they did mark any document on their side. Their defence was a total denial.

15. Having considered all the above, the trial court convicted the appellant/A1 alone as detailed in the first paragraph of this judgement and acquitted A2 from the charge under Section 302 r/w 34 of IPC. Challenging the above said conviction and sentences, A1 has come up with the present criminal appeal.

16. We have heard the learned counsel appearing for the appellant/A1 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

17. From the evidence spoken by P.W.14, the owner of the house and the evidence of P.W.1, besides the evidence of neighbours, it is crystal clear that A1 along with the deceased and his second wife Mrs.Sumathi was residing by the side of the house where P.W.1 was residing. It is also in evidence that A1 had developed suspicion over the fidelity of the deceased and that was the reason why, he shifted the family to Kodaikanal. It is in their evidence that on 10.06.2011, the deceased had come alone and stayed at the house of P.W.1. P.W.1 had already lost his wife. The alleged occurrence had taken place on 12.06.2011 at 05.15 a.m.. No one had witnessed the occurrence. The medical

evidence reveals that the death was due to burn injuries. Now, the question is, who inflicted the burn injuries on the deceased and caused her death?

18. In order to prove the above fact, the prosecution relies on three dying declarations. The first and the foremost dying declaration was made by the deceased to P.W.21 Dr.Bhuvana when the deceased was brought to CMC Hospital, Coimbatore by P.W.1 for admission. The deceased had told P.W.21 that on 12.06.2011 at 05.15 a.m. when she was at the house of P.W.1, her husband came there, assaulted and set her on fire by pouring petrol. P.W.21, the Doctor, has further deposed that at that time, the deceased was fully conscious. This statement of the deceased being a dying declaration carries weightage as it is the earliest dying declaration by the deceased.

19. Next comes, the statement made by the deceased to P.W.25, the Sub Inspector of Police. That was recorded before 09.30 a.m. on 12.06.2011. In Ex.P.18, the deceased had reiterated that it was A1, who poured petrol, and set fire to her. There is no reason to reject this statement which also is a dying declaration. Then comes the judicial dying declaration recorded by P.W.23. P.W.23 had gone to the hospital at 10.00 a.m. when P.W.22 Dr.Shanthi was attending on the deceased. P.W.22 after examining the deceased, gave a certificate that the deceased was conscious and in a fit state of mind to make dying declaration. P.W.23, the learned Magistrate, in order to satisfy his judicial conscience about the mental fitness of the deceased made certain queries. From the answers given by the deceased and from the opinion of the doctor, he was fully satisfied that the deceased was in fit state of mind to make dying declaration and then, he recorded the dying declaration of the deceased between 10.10 a.m. and 10.45 a.m. In the said dying declaration (Ex.P.11) the deceased had stated that when she was at the house of P.W.1, A1 came there, poured petrol and set fire to her. The deceased had further stated that A1 had suspicion over her fidelity. This dying declaration satisfies all the judicial norms. The learned counsel for the appellant/A1 is not able to point out any defect at all in the recording of the same by the learned Magistrate. There is also no evidence even to remotely infer that the deceased would have been tutored so as to make a false allegation against A1. There is also no material on record to infer that the deceased would have made a false statement in her dying declaration. From these dying declarations, we hold that it was this accused, who poured petrol on the deceased and set her on fire and caused the death of the deceased.

20. The learned counsel for the appellant/A1 would submit that almost all the witnesses have turned hostile in the case. Of course it is true , but, that would not in any manner make

the dying declarations to lose their credibilities. Had these witnesses spoken, as expected by the prosecution, the same would have lent more support to the case. But, even in the absence of any supporting evidence from these witnesses, since there were three dying declarations which are substantive in nature and since there is no inconsistency among these three dying declarations based on the same alone, we are able to come to the conclusion that it was this accused who caused the death of the deceased. The recovery of the motor cycle on the disclosure statement made by A1 is irrelevant and thus, we do not consider the same.

21. Now, the next question is, "what is the offence that was committed by A1 by his act?" There is no evidence that A1 had gone to the house of the deceased armed with a petrol can. It is in evidence that the deceased had left the house of A1 at Kodaikanal and came down to Coimbatore. From the evidences, it could be culled out that A1 had come in search of the deceased; He found the deceased at the house of P.W.1; Already he had suspicion over her fidelity; P.W.1 had already lost his wife; The deceased was staying at his house; The suspicion was that already the deceased had illicit intimacy with P.W.1; and on seeing the deceased at the house of P.W.1, quite naturally, A1 would have been provoked by her conduct. Going by the natural human conduct, it is presumable that there would have some wordy altercation between A1 and the deceased and it was only in that altercation, A1 had poured petrol which was already found there and set fire to her. Thus, though the act of the accused would fall under third limb of Section 300 of IPC, certainly, the same would fall only within the first exception to Section 300 of IPC. Therefore, the appellant/A1 is liable to be convicted only for the offence under Section 304(i) of IPC.

22. Now, turning to the quantum of sentence, the accused is a middle aged man and he has got a second wife and children to look after. He had no bad antecedents. Having regard to all these mitigating as well as the aggravating circumstances, we are of the view that sentencing A1 to rigorous imprisonment for ten years besides fine of Rs.1,000/- would meet the ends of justice.

23. In the result, This criminal appeal is partly allowed. The conviction and sentence imposed on the appellant/A1-Muthupandi by the trial court for offence under Section 302 of IPC are set aside and instead, he is convicted under Section 304 (i) of IPC and he is sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to

suffer rigorous imprisonment for four weeks. The period of detention already undergone by the appellant/A1 shall be set off under Section 428 of Cr.P.C.

kmk/kmk

s/d-

Assistant Registrar (CS-II)

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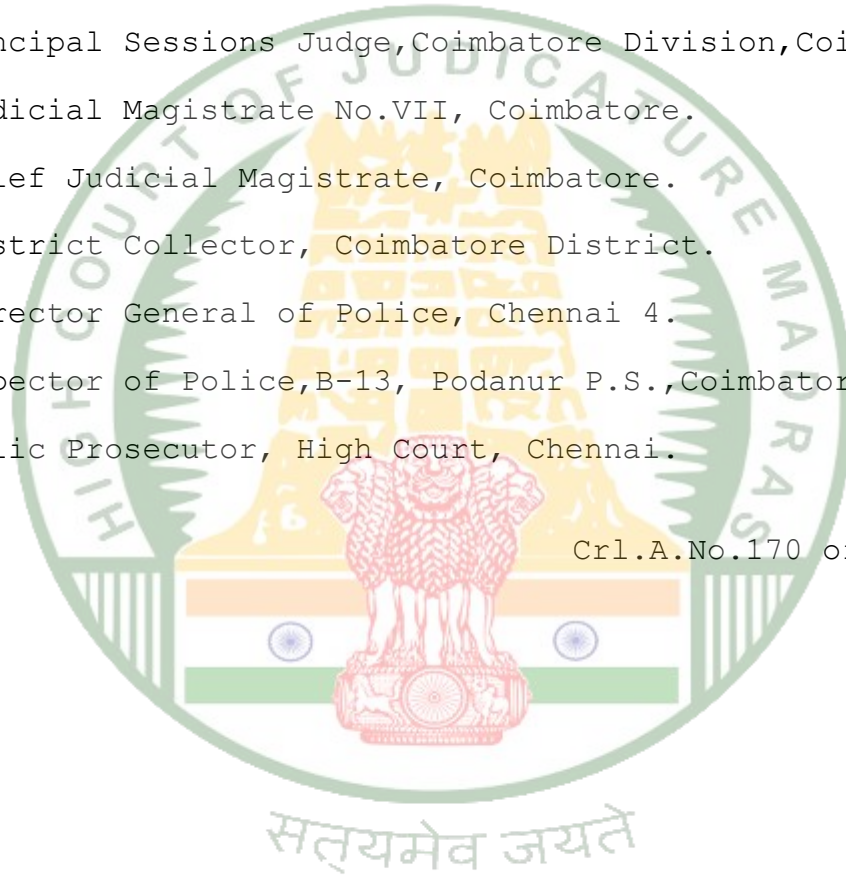
Sub-Assistant Registrar

To

1. The Principal Sessions Judge, Coimbatore Division, Coimbatore.
2. The Judicial Magistrate No. VII, Coimbatore.
3. The Chief Judicial Magistrate, Coimbatore.
4. The District Collector, Coimbatore District.
5. The Director General of Police, Chennai 4.
6. The Inspector of Police, B-13, Podanur P.S., Coimbatore District.
7. The Public Prosecutor, High Court, Chennai.

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