

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 13-06-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.184 of 2014

Babu @ Samsudhin ... Appellant/Accused No.1

-vs-

State by
Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
(Cr.No.325/2010). ... Respondent /Complainant

Appeal filed U/S 374 (2) of CRPC against the judgment,
dated 22.01.2014, made in S.C.No.199 of 2012 on the file of
District Mahalir Sessions Court, Cuddalore.

For appellant : Mr.D.Ashok Kumar for C.Vijayakumar

For respondent : Mr.M.Maharaja,
Additional Public Prosecutor.

JUDGMENT

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

Appellant is the first accused in S.C.No.199 of 2012 on the file of District Mahalir Sessions Court, Cuddalore. There were two other accused, by name, John Basha and Sabirabi. The trial Court framed charges under Sections 342 and 302 read with 34 IPC against all the three accused. By judgment, dated 22.01.2014, the trial Court acquitted the accused 2 and 3; however, convicted the first accused under Section 302 IPC alone and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for two years. The trial Court acquitted the first accused of the charge under Section 342 IPC. Challenging the said conviction and sentence, the appellant/first accused is before this Court with this Criminal Appeal.

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

2.1. The deceased in this case was one Mrs.Raghmathunisha. Appellant is her husband. The marriage between them was celebrated 22 years before the occurrence. Out of the said wedlock, they had a son. They were all residing at Bhuvanagiri village. The appellant/first accused, for a long time, had gone abroad, on account of his employment. He used to visit his house at Bhuvanagiri once in two years, on a two month holiday.

2.2. It is alleged that when the appellant was in a foreign country, the deceased had developed illicit intimacy with someone. Four months prior to the occurrence, the appellant had returned to the village and developed suspicion over the fidelity of the deceased. He is said to have sent the deceased to her parental home at Srimushnam. After that, he went to the house of the parents of the deceased, persuaded the deceased and brought her back to Bhuvanagiri. When the deceased was thus at Bhuvanagiri at the house of the accused, their son got married.

2.3. On the day of occurrence, that was on 08.10.2010, the deceased was at the house of the appellant. Around 02.00 a.m. on 09.10.2010, it is alleged that out of the above said suspicion over the fidelity of the deceased, the appellant joined the other accused and with a view to do away with the deceased, threw corrosive acid on the face and all other parts of the body of the deceased. It is further alleged that the accused 2 and 3 held the deceased and tied her with a rope to facilitate the first accused to pour acid on the deceased. Unable to bear the pain, the deceased ran out of the house and was standing on the road, crying for help. P.W.6, a neighbour, and few others rushed towards her. Since she had sustained extensive acid burn injuries, by means of 108 Ambulance, she was taken to Government Headquarters Hospital at Cuddalore, from where, she was taken to Chidambaram Government Hospital. At 02.20 a.m., on 09.10.2010, P.W.13 Doctor examined her. At that time, the deceased was conscious. She told that when she was at her house, her husband poured acid on her face and body. She further told that her father-in-law and brother-in-law were present. The extent of the injuries was 25%. The right eye was completely pierced by acid. P.W.13 admitted the deceased as an in-patient. Ex.P-11 is the Accident Register. P.W.1 went to Bhuvanagiri Police Station at 03.00 p.m. on 09.10.2010 and made complaint against all the three accused. P.W.14, on receipt of the said complaint, registered a case in Crime No.325 of 2010 under Sections 342 and 326 IPC. Ex.P-13 is the F.I.R. Taking up the case for investigation, at 04.00 p.m., he proceeded to the place of occurrence and prepared an Observation Mahazar in the

presence of P.W.7 and another witness. He examined P.W.1 on the same day and recorded his statement. He went to Jipmer Hospital and recorded the statement of the deceased. He made a request to the Judicial Magistrate to record Dying Declaration.

2.4. P.W.2, the then Judicial Magistrate No.I, Puducherry, on receipt of the request, went to Jipmer Hospital and between 01.20 p.m. and 01.35 p.m., he recorded the Dying Declaration of the deceased. The doctor attending on her gave opinion that the deceased was conscious. The learned Judicial Magistrate, from the answers elicited to certain queries made by him and from the opinion of the doctor, was satisfied that the deceased was fully conscious enough to give Dying Declaration. Ex.P-2 is the Dying Declaration.

2.5. On the same day, at 11.10 a.m., P.W.14 arrested the first accused in the presence of P.W.9 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the bottle and the rope. In pursuance of the same, he produced the bottle (M.O.1) and the rope (M.O.2) from the place of hideout. P.W.14 recovered the same under a mahazar and forwarded the same to the Court with a request to the Court to forward the said bottle for chemical examination. On his request, the bottle was sent for chemical examination. P.W.3 conducted chemical examination and found that there were no traces of acid in the bottle. Then, P.W.14 handed over the case diary to P.W.16 for further investigation. P.W.16 took up the case for further investigation on 03.11.2010. The deceased, who was discharged from the hospital, was at the house of her parents. On 07.11.2010 at 01.00 p.m., she died. On receiving intimation, P.W.16 altered the case into one under Section 302 IPC and forwarded the alteration report under Ex.P-19 to the Court. Then, on the same day, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

2.6. P.W.12, doctor, conducted autopsy on the body of the deceased on 08.11.2010 at 11.00 a.m. and found the following injuries :

"External Injuries : Extensive shocked wounds over chest, face, head, upper limbs & black coloured over Face and fore arm.
Internal Exam : Ribs Intact. Heart : Empty pale, lungs pale, Hyoid Intact. Liver : Spleen, Kidneys - pale, Intestine distended with gas. Bladder empty. Uterus normal. Skull Intact. Membrane : Intact. Brain pale."

Ex.P-10 is the Post-mortem Certificate. The doctor gave opinion that the deceased would appear to have died of chemical burns around 55% and septicemia.

2.7. P.W.16 examined many more witnesses, collected the post-mortem certificate and examined the doctor, who conducted autopsy. Finally, he laid chargesheet against the accused on 22.02.2011 under Sections 342 and 302 IPC.

3. Based on the above materials, the trial Court framed charges under Sections 342 and 302 IPC against all the accused and they denied the same.

4. In order to prove the case, on the side of prosecution, as many as 16 witnesses were examined, 21 documents and 2 material objects were marked.

5. Out of the said witnesses, P.W.1 has turned hostile and he has not supported the case of the prosecution. P.W.2, the then Judicial Magistrate, has stated about the Dying Declaration recorded by him. P.W.3, Chemical Analyst, has stated that when M.O.1 was examined, he found no traces of any acid in it. P.W.4 is the father of the deceased, who spoke about the entire occurrence. P.W.5 has turned hostile and he has not supported the prosecution case in any manner. P.W.6 is a neighbourer, who stated that when he went to the house of the deceased on raising an alarm, he found the deceased standing on the road and, at that time, she told that her husband poured acid on her. P.Ws.7 and 8 are mahazar witnesses. P.Ws.9 and 10 have also turned hostile and they have not supported the prosecution case in any manner. P.W.11, the sister of the deceased, has stated about the occurrence and she went to the hospital. P.W.12 has spoken about the post-mortem conducted and given final report regarding the cause of death. P.W.13 has stated that she examined the deceased in Chidambaram Government Hospital on 08.10.2010 at 12.00 midnight. At that time, the deceased told her that her husband poured acid on her. P.W.14 has spoken about the registration of the case on the complaint of P.W.1 and the investigation done by him. P.W.15, doctor, has spoken about the injuries found on the accused. According to her, on 10.10.2010 at 07.10 p.m., the accused was brought to the hospital and she found acid burn injuries on his left forearm at three places. She has further stated that the accused told him that when he threw acid on his wife, he also accidentally sustained acid burn injuries. P.W.16 has spoken about the further investigation done by him and the final report.

6. When the above incriminating materials were put to the accused, they denied the same as false. Their defence was one of total denial.

7. Having considered all the above materials, the trial Court acquitted the accused 2 and 3; however, convicted the

first accused for the offence under Section 302 IPC alone. That is how, he is before this Court with this appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor, appearing for the State, and also perused the materials available on record.

9. In this case, there is no eye witness account. According to the evidence of P.W.4, the deceased was staying with him and she was taken to the house of the appellant by him. There is no dispute that the deceased was staying with the accused in his house. On 08.10.2010 at around 12.00 a.m., the appellant/accused was at his house. The deceased had cried and ran to the road opposite to the house of the accused. The alarm raised by her attracted the neighbours. P.W.6 rushed towards the said place. He found the deceased with acid burn injuries. The deceased was conscious. When he enquired her, she told that it was the accused, who threw acid on her. Similarly, to P.W.13, Dr.Prema, at 12.00 midnight on 08.10.2010, the deceased told her that her husband poured acid on her body. Then, to P.W.2, the learned Judicial Magistrate also, the deceased said so. Thus, there were three statements consistently made by the deceased that it was this accused, who poured acid on her. But, now, the case is, whether these three statements can be held as Dying Declarations so as to admit the same in evidence and to treat the same as substantive evidence.

10. In order to make a statement as a Dying Declaration, it is essential for the prosecution to prove that the said statement pertains to the cause of death or any of the circumstances which resulted in the cause of death. Therefore, the proof of cause of death is an essential legal burden on the prosecution.

11. Here, in this case, the incident occurred on 08.10.2010. The deceased had undergone treatment in Chidambaram Government Hospital, in Cuddalore Government Hospital and in Jipmer Hospital at Puducherry and, finally, she was discharged from the hospital. None of the medical records have been produced, except the Accident Register, which was issued on 08.10.2010 at the time of admission of the deceased in Chidambaram Government Hospital. There is no evidence as to when the deceased was discharged. P.W.4 has stated that the deceased was discharged after 21 days from the hospital. Thus, the prosecution has failed to prove as to what was the condition of the deceased in the hospital, when she was undergoing treatment in the hospital as an in-patient. After her discharge, the deceased was at the house of P.W.4 at Srimushnam. She died on 07.11.2010. It is not known whether any treatment was continued by the deceased after her discharge from the hospital until her demise. There is also no evidence as to what

was her condition when she was staying at the house of P.W.4, after her discharge from the hospital.

12. P.W.12, Doctor Tamilarasan, who conducted autopsy on the body of the deceased, had found all healed external wounds. There were no internal injuries. The right eye was badly affected by the acid. His opinion was that the deceased would appear to have died of chemical burns around 55% and septicemia. The death due to septicemia can be inferred either from the injection visibly found in the body of the deceased or by looking into the condition of the deceased before her death. Suppose the deceased had run high temperature uncontrollably, it may be because of septicemia. Thus, without looking into the treatment records, unless infection is found in the body of the deceased, it cannot be said without any doubt that the deceased died due to septicemia.

13. In the instant case, though the doctor had stated that the death of the deceased was due to septicemia, in order to substantiate the said opinion, the doctor had not given any reason. A perusal of his evidence as well as the post-mortem certificate would go to show that there were no symptoms of any infection on the body of the deceased. The doctors, who treated the deceased all through when she was in the hospital, were not examined. As we already pointed out, the treatment records pertaining to the deceased have not been produced. Whether any treatment was given to the deceased after her discharge has also not been stated by the prosecution by means of any evidence. Thus, the opinion of the doctor that the death was due to acid burn injuries and septicemia, in our considered view, is out of mere surmise and the said opinion is not borne out by any other scientific reason. Therefore, the opinion of P.W.12 that the death of the deceased was due to acid burn injuries and septicemia cannot be accepted. Once this opinion is rejected, as a corollary, it has to be held that the prosecution has failed to prove the cause of death.

14. As we have concluded hereinabove, since the prosecution has failed to prove the cause of death, the statements made by the deceased to P.Ws.6,13 and 2 cannot be termed as Dying Declarations so as to admit the same in evidence under Section 32 of the Indian Evidence Act. These statements can be treated only as former statements of the deceased, which are not admissible in evidence at all. In such view of the matter, we cannot give any weightage for these three statements of the deceased.

15. Once these three statements are eschewed from consideration, according to the learned counsel for the appellant, the appellant is entitled for acquittal. But, we are not persuaded by the said argument. De hors eschewing of these

three statements from consideration, there are sufficient other evidences available on record to prove that it was this accused, who caused acid burn injuries on the body of the deceased. At the time when the accused was arrested, he had acid burn injuries on his body. He was produced before P.W.15. To P.W.15, he had told that while he threw acid on the body of his wife, by accident, he sustained the acid burn injuries. Since this statement was made to the doctor by the accused while in police custody, it is not admissible in evidence, in view of the bar contained under Section 25 of the Indian Evidence Act. Therefore, this statement of the accused is eschewed from consideration and the same cannot go to help the prosecution in any manner. But, at the same time, the accused has no explanation to offer in respect of the injuries. He has not taken the plea, which would be consistent with the so called innocence pleaded by him, like, while trying to save his wife, he sustained the injuries. There is enormous evidence to show that the said injuries were sustained in one and the same transaction. Apart from that, the occurrence had taken place in the house of the accused. It was post midnight. The deceased cried for help and ran to the middle of the road. She told P.W.6 that it was her husband who poured acid on her. This statement of the accused, as we have already concluded, cannot be treated as a Dying Declaration, but as a former statement, made in the same transaction, is relevant under Section 6 of the Indian Evidence Act. To that extent, this statement can be taken as a piece of evidence. The conduct of the accused in fleeing away from the scene of occurrence when the deceased was struggling for life with acid burn injuries is a very adverse conduct on the part of the accused. The appellant/accused is not a third party to the deceased. Instead, he was the husband of the deceased. Even then, without making any attempt to save the deceased, he ran away from the scene of occurrence. This unnatural conduct of the accused is consistent with his guilt. This is yet another strong circumstance against the accused.

16. From these circumstances, which we have elaborately dealt with hereinabove, in our considered opinion, the prosecution has clearly proved that it was this accused, who threw acid on the deceased, which resulted in extensive burn injuries on her body. She was in the hospital for more than 21 days. The injuries are certainly dangerous to life. Thus, the act of the accused would fall under Section 307 IPC. Accordingly, he is liable to be punished.

17. Turning to the quantum of punishment, the accused had mercilessly threw corrosive acid on the face of his wife. The attempt was only to kill her. He had done it out of suspicion over her fidelity. Having regard to the background of the accused, his social status, his age and other mitigating circumstances, we are of the view to convict and sentence him to

undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-; in default, to undergo rigorous imprisonment for eight weeks, to meet the ends of justice.

18. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside and, instead, he is convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-; in default, to undergo rigorous imprisonment for eight weeks. The period of imprisonment already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

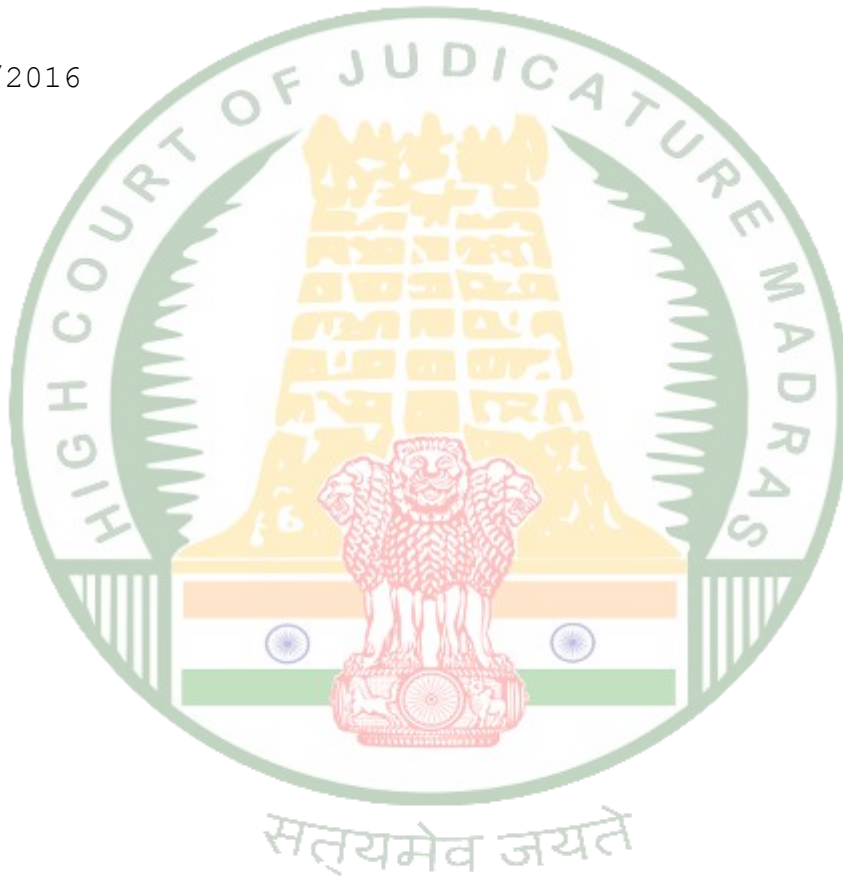
- 1.The District Mahalir Sessions Court,
Cuddalore.
- 2.The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The District Collector,
Cuddalore District.
- 5.The Superintendent of police,
Cuddalore.
- 6.The Director General of Police,
Mylapore, Chennai-9.
- 7.The District Munsif Cum Judicial Magistrate,
Portonova, Cuddalore District.
- 8.Thro The Chief Judicial Magistrate,
Cuddalore.

9.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.Vijayakumar, Advocate SR.31846

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