

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.275 of 2014

Kumar @ Sivakumar ...Appellant/Accused

Vs

State rep. By
Inspector of Police,
Poraiyar Police Station,
Nagappattinam District,
Crime No.54 of 2010 ...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Fast Track Mahila Court, Nagappattinam in S.C.No.233 of 2010 dated 28.03.2014.

For Appellant : Mr. V.Sathish

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The sole accused in S.C.No.233 of 2010 on the file of the Fast Track (Mahila Court), Nagappattinam, is the appelllant herein. He stood charged for offences under Sections 449 and 302 IPC. By judgment dated 28.03.2014, the trial Court convicted him under both the charges and sentenced him to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.2000/- in default to undergo simple imprisonment for one year for the offence under Section 449 IPC and to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default to under go simple imprisonment for one year for the offence under Section 302 IPC, and the trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased one Kasthuri is the wife of P.W.1. The deceased developed illicit intimacy with the accused, after coming to know about the same, P.W.1 warned the deceased, so she severed the connection with the accused. On 18.02.2010, P.W.1 received information that deceased was taken to Karaikal, Government Hospital with burn injuries, immediately, he reached the hospital, where the deceased told him that due to severe stomach pain, she herself poured kerosene and set fire on her. Thereafter, the respondent police also obtained statement from the deceased. Subsequently, on 23.02.2010, the deceased told to P.W.1 that it is the accused who came to her house on 18.02.2010, and he only poured kerosene and set fire on her, but, she wrongly stated that as if she poured kerosene and set fire on her. Thereafter, P.W.1 informed the police about the same and given a requisition letter to the police to record a fresh statement from the deceased (Ex.p.1)

3. On receipt of Ex.P.1, P.W.8, went to the hospital and obtained a statement from the deceased (Ex.P.11) and registered a case in Crime No.54 of 2010 for the offences under Sections 452, 294(b) and 307 IPC against the accused. Ex.P.12 is the First Information Report. In the meantime, on 23.02.2010 at 10.30 a.m., P.W.2, the Judicial Magistrate No.2, Karaikal, on receipt of requisition letter (Ex.P.2) for recording dying declaration, went to the Government Hospital, Karaikal and recorded the dying declaration (Ex.P.5) of the deceased stating that it is the accused who poured kerosene and set fire on her. The deceased succumbed to injuries on 23.02.2010 itself. Hence, P.W.8 altered the case into 302 IPC and the Alteration Report is Ex.P.13, he forwarded Ex.P.12 and Ex.P.13 to the higher officials and to the Court.

4. On receipt of the First Information Report, P.W.14, Inspector of Police, commenced the investigation, visited the scene of occurrence and prepared Observation Mahazar (Ex.P.14) and Rough Sketch (Ex.P.19) and also recovered an inskirt (M.O.1), in the presence of the P.W.11 and another witness. On 24.02.2010, P.W.14 conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared inquest report (Ex.P.20). He recorded the statement of the other witnesses. At about 2.00p.m., near Kattucheri Bus-stop, he arrested the accused. On such arrest, the accused gave a voluntary confession and based on the disclosure statement, he recovered plastic cane (M.O.2) and match box (M.O.3) under Mahazar (Ex.P.17) in the presence of P.W.12 and another witness. Then, he sent the accused to the Court for judicial custody and also forwarded the material objects to the Court. Then, he sent the request for post mortem of the dead body.

5. On 24.02.2010 at 11.45 a.m. P.W.6, the Medical Officer, Karaikal Government Hospital, conducted autopsy on the body of the deceased. He found the following injuries:

" External examination : (including external injuries)

Deceased is an adult female of moderate built and nourishment. Eyes closed, pupil dilated and conjunctiva pale. Rigor mortis well established and retained all over the body. Tips of fingers and toes pale. All external orifices normal. Superficial infected external burns seen all over the body except portion of scalp, thighs and soles. Lesions seen covered by greenish yellow coloured slough. About 90 percent involvement (dupuytren's 2nd degree to 3rd degree). No other external injuries."

Ex.P.9 is the Postmortem Report. He also gave a opinion that the death is due to septicemic shock as a result of burns sustained.

6. P.W.14, recorded the statement of the postmortem doctor and other witnesses and he handed over the investigation to P.W.15. P.W.15, took up the case for further investigation, and completed the investigation, laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on its side, as many as 15 witnesses were examined and 20 documents were exhibited, besides marking 3 Material Objects.

8. Out of the said witnesses, P.W.1 is the husband of the deceased. He has spoken about the illicit intimacy between the deceased and the accused and after he warned the deceased she has severed the connection with the accused. According to him, at the time of admitting the deceased in the hospital, the deceased has stated that due to severe stomach pain, she poured kerosene on herself and set fire on her. The respondent police also recorded similar statement of the accused. On 23.02.2010, after 5 days, she changed her version and told P.W.1 it is only the accused poured kerosene, and the same was informed to the police by P.W.1. Once again, the respondent police obtained another statement from the deceased and registered a case against the accused.

9. P.W.2, the then Judicial Magistrate, No.II, Karaikal, recorded the dying declaration of the deceased. P.W.3 is a doctor, working in the Government Hospital, Karaikal, he has given a certificate (Ex.P.4) that the deceased was found conscious and in a fit state of mind to give a dying declaration. P.W.4 is the another doctor working

in the Government Hospital, Karaikal. He has made an endorsement on 23.02.2010 that the deceased is in a fit and conscious mind to give a statement to the respondent police. P.W.5, doctor, working in the Government Hospital, Karaikal, has spoken about the admission of the deceased in the hospital and also issuance of Accident Register (Ex.P.7). Since the doctor, who admitted the deceased, was on leave, he has given the evidence based on the records and as per Accident Register (Ex.P.7), as per the records at the time of admission, the deceased has stated that it is a self immolation. P.W.6 is the doctor who conducted postmortem on the body of the deceased and gave the final opinion regarding the cause of death.

10. P.W.7, the then Head Constable, informed the death of the deceased to the respondent police. P.W.8 is the then Sub-Inspector of Police, attached to the respondent police Station. According to him, on 19.02.2010, at about 10.00 a.m., he went to the Government Hospital, Karaikal and obtained a statement from the deceased (Ex.P.10) and registered a case in Crime No.35 of 2010. Subsequently, on 23.02.2010, at about 9.30 a.m., on receipt of requisition letter (Ex.P.1) given by P.W.1, he proceeded to the hospital at about 12.15 p.m. and obtained another statement (Ex.P.11) from the deceased. Based on that, he registered a case in Crime No.54 of 2010 for offences under Sections 452, 294(b), and 307 IPC. Subsequently, after the death of the deceased, he altered the section into 302 IPC and the alteration report is Ex.P.13. P.W.9, Head Constable, submitted the First Information Report and alteration report to the Judicial Magistrate Court, Myladuthurai.

11. P.W.10, father of the deceased, reached the hospital on 19.02.2010, where the deceased told him that due to severe stomach pain, she has set fire on her. Once again, on 23.02.2010, she told him that only the accused poured kerosene and set fire on her. P.W.11 is the mahazar witness and also witnessed to the recovery of M.O.1. P.W.12 is a Village Administrative Officer, who is a witness to the arrest of the accused and also recovery of M.Os.2 and 3. P.W.13 is a neighbour of the deceased. Her evidence was that after hearing the noise, she went to the house of the deceased and sent the deceased in an ambulance to the Government Hospital, Karaikal. P.W.14, Inspector of police, conducted the investigation, arrested the accused and recorded the statement of the witnesses. P.W.15, took up the case for further investigation and on completing investigation, he laid a charge sheet in this case.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, the president of the village panchayath was examined as D.W.1 and Ex.D.1 to Ex.D.3 have been marked.

13. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

14. We have heard Mr. V. Sathish, learned counsel appearing for the appellant and Mr. M. Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. It is a case of circumstantial evidence. The prosecution mainly relied upon the dying declaration of the deceased. There are four dying declarations. The occurrence took place on 18.02.2010, at about 8.00 p.m., and the deceased was admitted in the Government Hospital, Karaikal. At the time of admission, she told to the doctor that it is a self immolation and in Ex.P.7, Accident Register also it is mentioned as alleged suicidal burn injury. Thereafter, P.W.8, obtained a statement (Ex.P.10) from the deceased on 19.02.2010, at 10.00 a.m., and she told that due to severe stomach ache, she herself poured kerosene and set fire on her. Based on that P.W.8, registered a case in Crime NO.35 of 2010 and the case is pending. (But the above First Information Report was not produced before the Court). On 19.02.2010 itself the deceased told to P.W.10, who is father of the deceased, that she attempted to commit suicide. Subsequently, on 23.02.2010, she changed her version and informed to P.W.1, that it is only the accused who poured kerosene and set fire on her. Based on that, another statement was obtained from the deceased by P.W.8 and a case was registered in Crime No.54 of 2010 for offences under Sections 452, 294(b), 307 IPC. On the same day, she has given a dying declaration before the Judicial Magistrate stating that only the accused had poured kerosene and set fire on her.

16. From 18.02.2010 to 23.02.2010, for 5 days, the statement of the deceased was that it is a self immolation and after 5 days, on 23.02.2010, she totally changed her version and given a new statement that it is only the accused who poured kerosene and set fire on her. Except, the dying declaration of the deceased, there is no other evidence available to connect the accused with the occurrence. It is settled law that the dying declaration can be a sole basis for convicting the accused, provided that the dying declaration is voluntary and inspires the confidence of the Court.

17. In the instant case, from 18.02.2010 to 23.02.2010, the deceased maintained that it is a self immolation. But, all of a sudden, after 5 days, i.e. on 23.02.2010, she changed her version and put the blame on the accused. Hence, the last dying declaration of the deceased does not inspire the confidence of this Court. In view of the above discrepancies in the dying declarations of the

deceased, we are unable to believe the same and convict the accused based on the dying declaration of the deceased. In the above circumstances, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, hence, the accused is entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Fast Track Mahila Court, Nagappattinam, in S.C.No.233 of 2010, by the judgment dated 28.03.2014 is hereby set aside. The appellant/accused is acquitted of the charges levelled against him and he is directed to set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The Sessions Judge,
Fast Track Mahila Court, Nagappattinam.
 2. The Judicial Magistrate, No.1, Nagapattinam.
 3. The Chief Judicial Magistrate, Nagapattinam.
 4. The Inspector of Police, Poraiyar Police Station,
Nagappattinam District.
 5. The Superintendent, Central Prison, Trichy.
 6. The District Collector, Nagapattinam.
 7. The Director General of Police, Mylapore, Chennai.
 8. The Public Prosecutor, High Court, Madras.
 9. The Section Officer, Criminal Section, High Court, Madras.
- + 1 cc to Mr.T.P. Senthil Kumar, Advocate Sr.34683

CrI.A.No.275 of 2014

BVS (CO)
Eu 10.1.17