

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.346 of 2014

Karthikeyan

...

Appellant/Accused

Vs

State rep. By
Deputy Superintendent of Police,
Mayiladuthurai Sub Division,
Cr.No.520 of 2004

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 29.04.2014 passed in S.C.No.35 of 2008 by the Mahila Fast Track Court, Nagapattinam.

For Appellant : Mr.K.S.Rajagopalan

For Respondent : Mr.E.Raja,

Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.35 of 2008 on the file of the Sessions Judge, Mahila Fast Track Court, Nagapattinam. He stood charged for an offence under Section 302 IPC. By judgment dated 29.04.2014, the trial Court convicted the appellant/accused for offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default to undergo Simple Imprisonment for one year. 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:-

Deceased, in this case, one Malathi, the second wife of the accused. The accused had a illicit intimacy with one Dhanam, So, the accused started harassing the deceased demanding dowry. The deceased, unable to bear the harassment of the accused, went to her mother's house and living there for some time. After some mediation, the deceased once again came to her matrimonial home and living with the accused. On 25.12.2004, at about 2.15 p.m., there was a quarrel between the accused and the deceased. During the quarrel, the accused poured kerosene on the deceased and set fire on her. P.W.1, who is paternal uncle of the accused, on hearing the news, came to the house of the accused and admitted the deceased in Government Hospital, Kumbakonam.

3. P.W.13, Doctor, working in the Government Hospital, Kumbakonam, admitted the deceased in the hospital and found 95% burn injuries on the deceased and issued Accident Register, Ex.P.19. At the time of admission, deceased told him that her husband poured kerosene and set fire on her.

4. Then, P.W.1 lodged a complaint, Ex.P.15, before the respondent police. One Rajadurai, Sub-Inspector of Police, attached to the respondent police, on receipt of the complaint registered a case in Crime No. 520 of 2004 under Section 174 Cr.P.C. and forwarded the same to the Judicial Magistrate and copies to the higher officials.

5. P.W.12, Deputy Superintendent of Police, Mayiladuthurai, on receipt of First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.2, and Rough Sketch, Ex.P.11 in the presence of P.W.3 and another witness. P.W.12 also recovered one Saree (M.O.1), in-skirt (M.O.2), blouse (M.O.3), match box with match sticks (M.O.4) and plastic can (M.O.5) under cover of a Mahazar, Ex.P.18.

6. On 25.12.2004, P.W.10, Judicial Magistrate, No.II, Kumbakonam, on receipt of a memo from the Government Hospital, Kumbakonam for recording dying declaration, proceeded to the hospital and at about 4.00 p.m., recorded the dying declaration of the deceased, Ex.P.8.

7. Subsequently, on 27.12.2004, at about 9.25 p.m., deceased succumbed to injuries. Hence, the case was altered into Section 306 IPC. P.W.11, R.D.O, Kumbakonam, conducted inquest on

the dead body of the deceased and prepared Inquest report, Ex.P.10.

8. P.W.8, Doctor, working in the Government Hospital, Kumbakonam, conducted postmortem on the dead body of the deceased on 28.12.2004 at 3.45 p.m., and found the following injuries :

" eyes closed, mouth closed, tongue inside the mouth. Burns over face both upper limbs, chest, back, abdomen right thigh left lower limb. Scalp hair not charred. 80% burn. Ribs- no fracture."

Ex.P.6 is the Postmortem certificate. P.W.8 gave opinion that the deceased was died of shock due to extensive burn injuries.

9. P.W.12. Recorded the statement of the witnesses and on 06.06.2005, he arrested the accused and remanded him to judicial custody. On completing the investigation, he laid charge sheet against the accused.

10. Based on the above materials, the trial Court framed a lone charge against the accused for offence under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 20 documents were exhibited, besides 5 Material Objects were marked.

11. Out of the said witnesses, P.W.1 is the brother of the accused father. According to him, after hearing the news, he rushed to the house of the accused and admitted the deceased in the Government Hospital, Kumbakonam and gave complaint, Ex.P.1. P.W.1 turned hostile. P.W.2, neighbour of the accused, saw the deceased coming out of the house with burn injuries. P.W.3 also turned hostile. P.W.4 is mother of the deceased. She has spoken about the dowry harassment made by the accused. According to her, when she met the deceased in the hospital, deceased told her that it is the accused, who poured kerosene and set fire on her. P.W.5 is a uncle of the deceased. He has also spoken about the previous quarrel between the accused and the deceased and in the hospital, deceased told him that it is only the accused who poured kerosene and set fire on her.

12. P.W.6, is known to the accused and the deceased, spoken about the quarrel between the accused and the deceased. P.W.7, Doctor, working in the Government Hospital, Kumbakonam, issued a death memo, Ex.P.4, to the police. P.W.8, Doctor, conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.9, Head

Constable, accompanied the dead body of the deceased to the Government Hospital, Kumbakonam and identified the dead body for postmortem. P.W.10, Judicial Magistrate, No.II, Kumbakonam, recorded the dying declaration of the deceased. P.W.11, R.D.O., conducted inquest on the dead body of the deceased at the Government Hospital, Kumbakonam, in the presence of panchayathars and others. P.W.12 has spoken about the investigation done and the final report filed by him. P.W.13, Doctor, admitted the deceased in the hospital and issued Accident Register, Ex.P.19.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. He did not choose to examine any witnesses, however, on his side, evidence given by P.Ws.5 and 6 before the Assistant Sessions Court, Mayiladurai, were marked as Ex.D.1 & 2 respectively.

14. 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.

15. We have heard Mr. M.S.Rajagopalan, learned counsel for the appellant and Mr. E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. There is no eye-witness to the occurrence and the case is only based on circumstantial evidence. The prosecution mainly relied upon the dying declaration of the deceased. There are two dying declarations. At the time of admission in the hospital, the deceased told the Doctor, P.W.13 that it is only the accused who poured kerosene and set fire on her. P.W.13 also issued an Accident Register, Ex.P.19, to that effect. The second dying declaration was given before P.W.10, Judicial Magistrate, No.II, Kumbakonam. P.W.10, after receipt of the memo from the Government Hospital, Kumbakonam, recorded the dying declaration of the deceased, after duly satisfied that deceased was fully conscious and also in a fit state of mind to give a dying declaration, also obtained a certificate from the duty doctor to that effect. In the above judicial dying declaration, deceased has given a lengthy statement explaining the previous quarrel and also told that at the time of occurrence, there was a quarrel between the accused and the deceased. During the quarrel, accused poured kerosene and set fire on her and thereafter, he went out of the house and shouted as if she committed self-immolation.

17. In the above two dying declarations, deceased has clearly implicated the accused. The Judicial dying declaration was recorded by Judicial Magistrate No.II, Kumbakonam after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration and the duty doctor also gave a certificate to the effect that the deceased was conscious, and in a fit state of mind to give dying declaration and also obtained a certificate from the duty doctor to that effect. Hence, there is no reason to disbelieve the same. It is settled principle of law that dying declaration can be made sole basis for convicting the accused if it is found voluntary and genuine and it was given in a fit state of mind.

18. In the instant case, we are fully satisfied that the deceased has given the dying declaration voluntarily and also in a fit state of mind, wherein, she has clearly implicated the accused. Hence, we are of the considered view that the prosecution has proved that, it is only this accused, who poured kerosene on the deceased and set fire on her, thereby caused her death.

19. Now, considering the evidence available and the dying declaration, we have to consider, "what was the offence that was committed by the accused by the said act?". All the material witnesses consistently deposed that there were frequent quarrel between the accused and the deceased. As per the judicial dying declaration of the deceased, before the occurrence, there was a quarrel between the accused and the deceased and during the quarrel, being provoked by the words of the deceased, accused lost his mental balance and poured kerosene and set fire on the deceased. Though the accused would not have any intention to cause the death of the deceased, certainly, he had the intention to cause bodily injury, which was sufficient in the ordinary course of nature, to cause the death of the deceased. In our considered view, the said act of the accused would squarely fall within the third limb and first exception under Section 300 I.P.C. Therefore, he is liable to be convicted under Section 304(i) IPC.

20. Now, turning to the quantum of punishment, accused is a poor man and he has no bad antecedent. It is not a premeditated murder and during the quarrel between the husband and wife, accused has lost his self control on account of the provocative words spoken by the deceased. The said provocation was grave and also sudden, and driven by the said sudden and grave provocation, the accused had poured kerosene and set fire on her. Hence, sentenced him to undergo Rigorous Imprisonment for 10 years with a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks, is sufficient

to meet the ends of justice.

21. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced him to undergo Rigorous Imprisonment for 10 years and pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Sessions Judge,
Mahila Fast Track Court,
Nagapattinam, Nagapattinam District

2 The Principal Sessions Judge,
Nagapattinam

3 The Judicial magistrate No.II
Kumbakonam

4 The Chief Judicial magistrate,
Kumbakonam

5 The Deputy Superintendent of Police
Mayiladuthurai

6 The Superintendent
Central Prison, Trichy

7 The Public Prosecutor, High Court, Madras

8 The Section Officer, Criminal Section, High Court, Madras

9 The Director General of Police,
Mylapore, Chennai 4

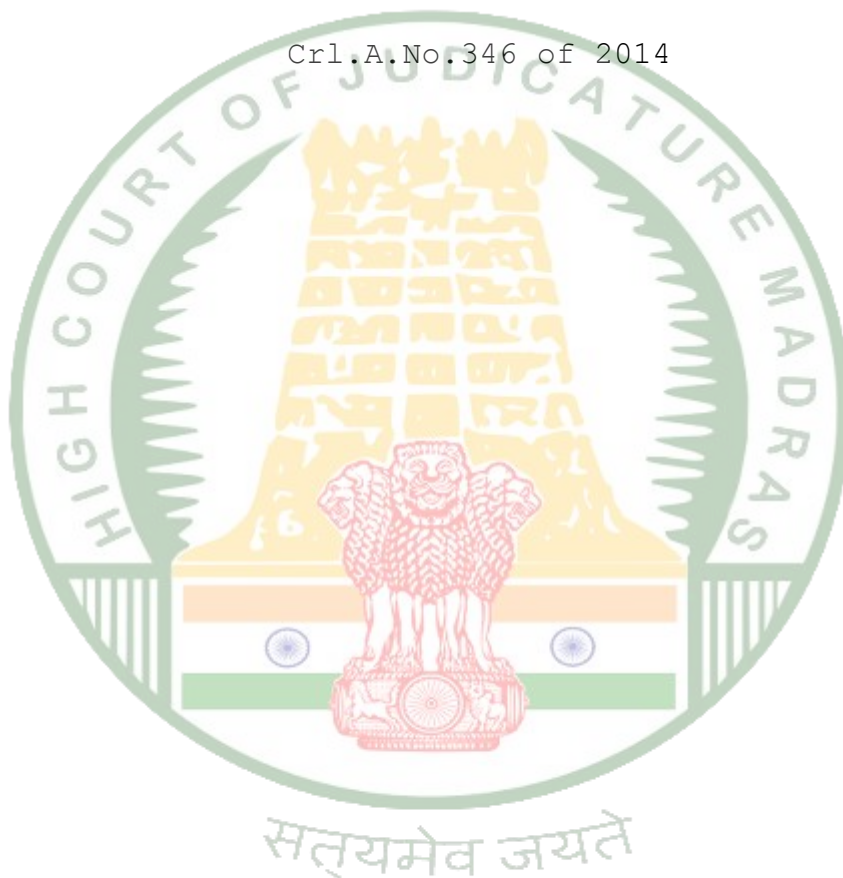
10 The Judicial Magistrate, II
Mayiladuthurai

11 do thor The Chief Judicial Magistrate
Nagapattinam

+1cc to Mr.K.S. Rajagopalan, Advocate, S.R.No.44755

GJ(CO)
md(30/12/2016)

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