

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 3.6.2016

CORAM:

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

CrI.A.No.380 of 2014

S.Manikaraj

... Appellant/Accused

Vs.

State,by

Inspector of Police,
Varapalayam Police Station,
Erode.

Crime No.40/2011. Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 28.3.2012 passed by the Additional
Sessions Judge, Gobichettipalayam (Fast Track Court No.2) in
S.C.No.9 of 2012.

For Appellant : Mr.C.D.Sugumar

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

JUDGMENT

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

The sole accused in S.C.No.9 of 2012 on the file of the
Additional Sessions Judge, Gobichettipalayam (Fast Track Court
No.2) is the appellant in this appeal. He stood charged for
the offence under Section 302 of the Indian Penal Code and the
Trial Court convicted the appellant for offence under Section
302 of the Indian Penal Code and sentenced him to undergo
life imprisonment and also imposed a fine of Rs.100/-, in
default, to undergo rigorous imprisonment for a further period
of six months. Challenging that conviction and sentence, the
appellant is before this Court with this appeal.

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

(a) The deceased was the wife of the appellant/accused.

Both of them were residing at door No.1/223, Indira Nagar,

Malaipalayam Village and suspecting the fidelity of the deceased, with premeditated intention to murder the deceased, on 09.04.2011, at about 5.00 pm, the accused poured kerosene on the deceased and set fire on her. On hearing the noise, PWs 3, 4 and 5 and others rushed to the house and found it locked inside. Thereafter, after two minutes, the accused opened the house and the above witnesses saw the deceased burning. Immediately, they poured water and doused the fire and admitted her in the Government Hospital, Gobichettipalayam.

(b) PW13, the Doctor working as Assistant Medical Officer at Government Hospital, Gobichettipalayam admitted the deceased and at that time, the deceased informed the Doctor that while she was cooking, she met with the fire accident, but, immediately, she changed the version and stated that her husband poured kerosene and set fire on her, PW13 recorded both statements and issued accident register Ex.P4.

(c) On information from the Hospital, PW20 Sub Inspector of Police reached the Government Hospital, Gobichettipalayam and obtained a statement from the deceased, Ex.P11 and registered a case in Crime No.40/2011 under section 307 of the Indian Penal Code and FIR is marked as Ex.P12, and sent the same to Judicial Magistrate II, Gobichettipalayam and also to the Inspector of Police, PW21.

(d) PW21, the Inspector of Police, on receipt of the FIR, reached the scene of occurrence at about 1.30 am on 10.4.2011, since it was midnight and there was no light, he could not prepare the observation mahazar and rough sketch. Hence, he visited the Government Hospital, Gobichettipalayam at 2.00 am, and recorded the statement of the deceased and PW3. PW21, once again went to the scene of occurrence at about 7.00 am and prepared the rough sketch, Exs.P13 in the presence of P.Ws.4, 5 and other witnesses. At about 1.15 pm, he arrested the accused in the presence of PW10 and other witness. On such arrest, the accused gave a voluntary confession and based on the disclosure statement, he recovered the plastic can M.O.5 near the bathroom of the house and also the match box M.O.4, he also recovered the burnt saree and jacket M.O.3 in the presence of the above witnesses. Thereafter, he remanded the accused to judicial custody.

(e) In the meantime, PW13, the Doctor sent a memo to the Judicial Magistrate II, Gobichettipalayam for recording the dying declaration of the deceased. PW18, the Judicial Magistrate No.II, Gobichettipalayam, received information at about 12.05 am on 10.4.2011, reached the Hospital at about 12.15 am, and after confirming that the deceased was conscious and in a fit state of mind to give the dying declaration, recorded the dying declaration, Ex.P9, and obtained a

certificate from the Doctor PW13 that the deceased was conscious and in a fit state of mind to give the dying declaration till the completion of recording the dying declaration.

(f) Subsequently, on 11.4.2011 at about 3.30, the deceased succumbed to the injuries. Hence, PW21 altered the case into under section 302, of the Indian Penal Code and sent the altered FIR Ex.P14, to the Judicial Magistrate. On 12.4.2011, PW21 conducted an inquest in the presence of panchayatdars between 7.00 am and 9.00 am in the hospital and sent the body for post mortem autopsy.

(g) PW17, the Doctor conducted post mortem autopsy on the body on 12.4.2011 at about 12.15 pm and found the following injuries:-

"External examination Burns present all over the body except both .. Death would appear 12-24 hours prior to autopsy. Scalp intact. Eyelids closed. Nose & Mouth - No discharge. Tongue - inside the mouth. Teeth 8/8/8/8. Ears. No discharge. Abdomen, distended.

Internal examination Abdomen uniform Thorax No # ribs. Heart wt. 250 gm. Right chamber Fluid... Lungs right 320 gms left 300 gms. - congested. Hyoid bone intact. Stomach empty. Liver wt. 90 gms congested. Spleen 170 gms - congested. Kidneys Both wt. 180 gms. congested. Intestine - distended with gel. Bladder - empty. Uterus normal. Opening of Head no # of skull bones. Brain 950 gms."

and opined that the deceased would appear to have died of burn injuries and issued post mortem certificate Ex.P8. On completion of investigation, PW21 the investigating officer filed charge sheet against the accused.

(h) Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 21 witnesses were examined and 15 documents and 5 material objects were marked.

3. Out of the said witnesses, PW1 is the sister of the deceased. She has spoken about the quarrel between the accused and the deceased and after hearing the news that the deceased was set on fire, she went to the house of the deceased and took her to the hospital. PW2 is also another sister of the deceased. She also reached the scene of occurrence after hearing the news and took the deceased to the hospital alongwith PW1. PW3 is a neighbour. His evidence was that after seeing the smoke emanating from the house of the accused, he, alongwith other neighbours, went to the house and

found that the house was locked inside and after asking the accused to open the house, the accused opened the house and they found the deceased with flames, they poured water on the deceased, they called PW8 a Nurse residing in the nearby house and PW8 came and gave some first aid, called the Ambulance and sent her to the Hospital. PW4 is also a neighbour and witness to Ex.P1 observation mahazar. PW5 is also residing in the next house and her evidence is that after hearing the news, she, alongwith her husband and PW1, rushed to the house of the accused and found the door was locked and shouted to open the door, then the accused opened the door and ran away from the house and the deceased told her that her husband viz. the accused poured kerosene and set fire on her. PW6 also came to the scene of occurrence after hearing the news. PW7 also saw the deceased in flames. PW8 is residing in the neighbouring house, who gave first aid and sent the deceased to the hospital. PW9 is a neighbour, who visited the deceased at the hospital after hearing the news and his evidence was that when he visited the deceased, she informed her that her husband poured kerosene on her and set fire to her. PW10 is the witness to the arrest of the accused and also seizure mahazar Ex.p3. P.Ws.11 and 12 are photographers. PW13 is the Medical Officer working in the Government Hospital, Gobichettipalayam. He admitted the deceased in the hospital at about 7.20 am on 9.4.2011, and at that time, the deceased informed him that her husband poured kerosene and set fire on her. He had found 80-90% burn injuries on the deceased. He sent memo to the Judicial Magistrate for recording the dying declaration and issued accident register Ex.P4. PW14 is an employer of the accused. PW15 is the Special Sub Inspector, who handed over the body for post mortem. PW16 is the Head Clerk in the Judicial Magistrate Court, who speaks about sending the material objects for chemical analysis. PW17 is the Doctor, who conducted post mortem autopsy and issued post mortem certificate Ex.P8 opining that the deceased would appear to have died of burn injuries. PW18 is the Judicial Magistrate, who obtained the dying declaration. PW19 is the Assistant working in the Forensic Laboratory, who issued chemical analysis report, Ex.P10. PW20 is the Sub Inspector of Police who obtained statement from the deceased and registered the FIR. PW21 is the investigating officer, who investigated the crime and after completing the investigation, filed charge sheet.

4. When the above incriminating materials were put to the accused under section 313 Code of Criminal Procedure, he denied the same as false. His defence was a total denial. He has not chosen to examine any witness and mark any document.

5. Having considered all the above, the Trial Court convicted the accused for the offence under section 302 of the Indian Penal Code and imposed sentence as stated in the first

para of the judgment. Challenging the above conviction and sentence, the accused is before this Court.

6. We have heard Mr.D.Sugumar, learned counsel for the appellant and Mr.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. The learned counsel for the appellant would submit that as per the evidence of PW13, the Doctor who admitted the deceased in the hospital and issued the accident register, Ex.P4, initially the deceased informed him that she caught fire while cooking and subsequently she changed her version and stated that her husband the accused poured kerosene and set fire to her. PW1 claims as an eyewitness but, she came to the scene of occurrence only after the occurrence and therefore, he cannot be an eyewitness to the occurrence. Apart from that the deceased suffered 80-90% burn injuries, therefore, she could not been conscious and gave the dying declaration, the recovery also was not proved by the prosecution with sufficient evidence, the presence of PW3 at the time of occurrence is also not proved, hence he sought for setting aside the conviction and sentence by allowing the appeal.

8. Per contra, the learned Additional Public Prosecutor would submit that that while giving the dying declaration, the deceased was conscious and in a fit state of mind which was recorded by the Judicial Magistrate after obtaining a certificate from the Doctor and also after satisfying herself that she was conscious and in a fit state of mind and therefore, the dying declaration cannot be discarded, even though at the time of admission, initially the deceased had stated that she caught fire while cooking, immediately, she changed her version and stated that only the accused had poured kerosene and set fire to her. Further, it is also the evidence of the Doctor that at the time of admission, the relatives of the deceased came only after admitting the deceased in the hospital, hence the question of tutoring was ruled out. Hence, there is no discrepancy as she immediately gave the correct version. Apart from that PWs3 and 5, who are neighbours, had stated that the occurrence took place inside the house where both the accused and the deceased were residing and PWs 3 and 4 were forced the accused to open the door and after opening of the door by the accused, saw the accused running away from the house. Hence, from the evidence of P.Ws.3 and 4, it is clear that the accused was present inside the house at the time of occurrence and it should be presumed that it is only the accused who set fire on the deceased.

9. We have carefully considered the rival submissions and perused the records. Admittedly, the occurrence took

place inside the house of the accused and at the time of occurrence, after hearing the noise, P.Ws.3 and 5 rushed to the house and found that the door was locked inside and they shouted to open the door, after two minutes, the accused opened the door and ran away immediately and they found that the deceased was in flames. Immediately, PW3 poured water on the deceased and doused the fire. Hence, from the independent witnesses residing in the neighbouring houses, it is crystal clear that at the time of occurrence, the accused was present inside the house and ran away after opening the door. There is no explanation from the accused with regard to the cause of fire. Apart from that when the deceased was admitted in the hospital, as per the evidence of PW13 Doctor, initially the deceased had stated that she caught fire while cooking, but, immediately, she changed her version and stated that it is only her husband poured kerosene and set fire on her. In the cross-examination, he had stated that the relatives of the deceased came to the hospital after the admission of the deceased. Hence, it is clear that the deceased had given her statement on her own volition and there is no tutoring at the instance of the others. Apart from that after admitting the deceased, PW13 immediately sent the memo to the Judicial Magistrate for recording the dying declaration and on receipt of the memo at about 12.15 pm, the Judicial Magistrate reached the hospital and after satisfying that the deceased was conscious and in a fit state of mind to give the dying declaration and after obtaining the certificate from the Doctor PW13 that the deceased was conscious and in a fit state of mind to give the dying declaration and after putting necessary questions, he recorded the dying declaration Ex.P9 wherein the deceased had categorically narrated the facts cogently and stated that only the accused, in the intoxicated mood, after locking the door inside, poured kerosene and set fire to her. It is also the statement of the deceased that the accused, suspecting her fidelity, frequently picked up quarrels with her hence he set fire to her.

10. We find no infirmity in the dying declaration. The learned Judicial Magistrate, after following the procedure and fully satisfied that the deceased was in fit state of mind recorded the dying declaration after obtaining necessary certificate from the Doctor. Hence, we find no reason to disbelieve the same. Further, the occurrence took place inside the house of the accused, and P.Ws.3 and 5 saw the accused inside the house and he only opened the door and ran away from the scene of the occurrence and there is no explanation from the accused. Apart from that the dying declaration was also recorded within a short period of the occurrence after observing all the necessary formalities and we find no infirmity in the dying declaration and we believe the dying declaration as true.

11. In the above circumstances, we find no merit in the appeal and the appeal is liable to be dismissed and accordingly, it is dismissed. The conviction and sentence passed in S.C.No.9 of 2012 by the Additional Sessions Judge, Gobichettipalayam (Fast Track Court No.2) is confirmed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Additional Sessions Judge,
Gobichettipalayam
(Fast Track Court No.2)
2. Do- Through The District Sessions Judge,
Erode.
3. The Judicial Magistrate II,
Gopichettipalayam.
4. Do- Through the Chief Judicial Magistrate,
Erode.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Inspector of Police,
Varapalayam Police Station,
Erode.
7. The Superintendent of Police,
Erode.
8. The District Collector,
Erode District.
9. The Director General of Police,
Mylapore, Chennai.
10. The Public Prosecutor,
High Court, Madras.

Cr1.A.No.380 of 2014

SCD(CO)
CA(12,09,2016)

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