

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-06-2016

CORAM

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

CRL.APPEAL No.450 of 2014

Mohamed Ibrahim

Appellant

-vs-

State, rep.by
The Deputy Superintendent of Police,
Erode Town Sub Division,
Erode.

Respondent

Appeal against the judgment, dated 11.01.2013, made
in S.C.No.32 of 2012 on the file of II Additional Sessions
Court, Erode.

For appellant : Mr.Ilayaraja Kandasamy,
Legal Aid Counsel.

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

JUDGMENT

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

Appellant is the sole accused in S.C.No.32 of 2012 on the file of II Additional Sessions Court, Erode. He stood charged for the offences under Sections 498-A and 302 IPC. By judgment, dated 11.01.2013, the trial Court convicted him for both the charges and sentenced him to undergo rigorous imprisonment for two years and pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for the offence under Section 498-A IPC; and to undergo imprisonment for life and pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months under Section 302 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The deceased in this case was one Mrs.Jamima Begam. The accused is her husband. The marriage between them was celebrated on 20.01.2006. After the marriage, they were residing together at B.P.Agaraharam, Poompuhar Nagar, Erode. At the time of marriage, 10 sovereigns of gold jewels and

cash of Rs.40,000/- were presented to the appellant by the parents of the deceased, as per the custom prevailing in their community. But, the accused was not satisfied with the same. He started demanding further properties from her parents. The accused spent lavishly and he also started taking liquors. On several occasions, as wanted by the accused, the deceased went to her parental home and got money for him also. Thus, in due course, a total sum of Rs.11,500/- was paid by the parents of the deceased.

2.2. On 06.09.2009, the accused wanted the deceased to get Rs.1000/- from her parents for whitewashing the house, since Ramjan festival was fast approaching on 21.09.2009. Since the deceased did not agree for the same, there was a quarrel. The accused harassed her. On 07.09.2009 at 08.45 a.m., when the deceased was alone at her home, the accused poured kerosene on her and set fire to her. The deceased, who was in flames, cried for help. The neighbourers arrived at the scene and put out the fire. The accused was very much present until the arrival of the neighbourers. Thereafter, the accused took the deceased to Erode Government Hospital at 12.59 p.m. on 07.09.2009. P.W.10 Dr.Tamilselvi examined her and found 90% burn injuries on the body of the deceased. The deceased was conscious. She told P.W.10 that her husband poured kerosene and set fire to her. She further told that the occurrence was at her house. P.W.10 gave intimation to the police about the same and admitted the deceased in the hospital as in-patient.

2.3. P.Ws.1 to 3 are mother, brother-in-law and sister of the deceased. They heard about the occurrence and they immediately rushed to the Government Hospital at Erode. They found the deceased under treatment. The deceased was conscious. When they enquired the deceased as to how she sustained the burn injuries, the deceased told them that the accused poured kerosene and set her on fire.

2.4. Thereafter, P.W.1 went to Karunkalpalayam Police Station at 03.15 p.m. on 07.09.2009 and made a complaint. P.W.17, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.594 of 2009 for the offences under Sections 498-A and 307 IPC and Section 4 of Dowry Prohibition Act against the accused. Ex.P-24 is the F.I.R. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate at 09.00 a.m. on 08.09.2009.

2.5. P.W.19, Inspector of Police, took up the case for investigation. He went to the hospital, examined the deceased and P.Ws.1 to 4 and recorded their statements (statement of the deceased had not been marked in evidence). Then, on going to the place of occurrence, he prepared Observation Mahazar and Rough Sketch, in the presence of P.W.6 and another witness. He recovered a banian and a match box without sticks from the place of occurrence under a mahazar. On the same day, at 06.30 p.m., he arrested the accused in the presence of P.W.7 and another witness. The accused gave a voluntary confession, in which, he disclosed the place in

which he had hidden the plastic kerosene can. In pursuance of the same, he took the witnesses to the place of occurrence and recovered a white coloured plastic can under a mahazar. At the place of occurrence, the son of the deceased by name Alauddin was also present and he told that the kerosene thrown on the deceased had fallen on him also. P.W.19 recovered the cloth of Alauddin under a mahazar.

2.6. When the investigation was in progress, on 11.09.2009, at 03.42 p.m., the deceased died in the hospital, succumbing to injuries. P.W.19 altered the case into one under Section 302 IPC and submitted an alteration report under Ex.P-30 to the Court. Then, he handed over the case to Deputy Superintendent of Police, for investigation.

2.7. P.W.20, Deputy Superintendent of Police, took up the case for investigation on 11.09.2009 itself. He went to the place of occurrence at 07.00 a.m. on 12.09.2009, examined P.Ws.1 to 4 and a few more witnesses and recorded their statements. At his request, P.W.16, Revenue Divisional Officer, conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.15, Doctor, conducted post-mortem on 12.09.2009 at 02.30 p.m. and found 90% burn injuries on the body of the deceased. Ex.P-18 is the Post-mortem Certificate and Ex.P-19 is the Final Opinion, regarding the cause of death. P.W.15 opined that the death of the deceased was due to extensive burn injuries found on the body of the deceased. P.W.20 proceeded with the investigation, examined the doctors, collected the medical records and finally laid chargesheet against the accused.

2.8. When the deceased was in hospital, P.W.18, the learned Judicial Magistrate, on receiving intimation, went to the hospital at 01.30 p.m. on 07.09.2009 and at 01.40 p.m., after being satisfied that the deceased was in critical state of mind, recorded the Dying Declaration of the deceased, in which, the deceased told that it was this accused, who poured kerosene and set fire to her.

3. Based on the above materials, the trial Court framed charges against the accused under Sections 498-A and 302 IPC, but the accused denied the same.

4. In order to prove the case, on the side of prosecution, 20 witnesses have been examined and 30 documents and 5 material objects marked.

5. Out of the said witnesses, P.Ws.1 to 3 have stated about the demand of dowry made by the accused and the consequential harassment meted out to the deceased. They have further stated that after the deceased was admitted to the hospital, when they met her in the hospital, she was conscious and she told that it was this accused, who poured kerosene on her and set fire to her. P.W.4, Head of the Jamath has stated that the deceased made a complaint that the accused was harassing her. He further stated that in the Jamath, issues

were sorted out and finally, the accused and the deceased agreed to live together happily. P.W.6 has spoken about the preparation of the observation mahazar and rough sketch, at the place of occurrence and the recovery of M.O.4, under Ex.P-3. P.W.7 has spoken about the arrest of the accused on 07.09.2009 and the consequential recovery of the plastic can. P.W.10, Doctor, has stated that when she was on duty at Government Hospital, Erode, the deceased was brought by the accused for treatment with burn injuries. She found 90% burn injuries on the body of the deceased. She has further spoken that the deceased was conscious and she told that her husband poured kerosene and set fire to her. P.W.9 Dr.Jagan Mohan has stated that when the learned Judicial Magistrate came to the hospital on 07.09.2009 at 01.30 p.m. to record Dying Declaration, he certified to him that the deceased was conscious. P.W.8 Doctor Deepa has stated that the deceased succumbed to injuries at 03.45 p.m. on 11.09.2009. P.W.11, Head Clerk of the Magistrate Court, has stated that he forwarded the material objects for chemical examination. P.W.12, Sub Inspector of Police of All Women Police Station at Erode, has spoken that on 15.06.2006, the deceased made a complaint against the accused, alleging that she was harassed by her husband. She has further stated that the accused was summoned to Police Station and, during enquiry, he agreed to take back the deceased and, thus, the enquiry was closed. P.W.13 has stated that he gave intimation regarding the death of the deceased to the jurisdictional police station. P.W.14 has stated that when P.W.17 recorded the statement of the deceased at the hospital, she was very much present and she stated that the deceased gave the statement voluntarily. P.W.15 has spoken about the post-mortem conducted on the body of the deceased and his final opinion, regarding the cause of death. P.W.16, the then Revenue Divisional Officer, has spoken about the inquest held by him. P.W.17 has spoken about the registration of the case on the statement made by the deceased. P.W.18 has spoken about the Dying Declaration recorded by her. P.Ws.19 and 20 have spoken about the investigation done and the final report filed.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. examination, he denied the same as false. On his side, one Mohamed Ali was examined as D.W.1. He has stated that the deceased was residing at his house for rent. He has further stated that at 08.45 a.m., on the day of occurrence, since smoke was emanating from the house, he rushed to the spot and the accused also came running towards his house, on seeing the smoke. He further stated that he and D.W.1 put out the fire and, thereafter, the accused took the deceased to the hospital. He has also stated that between 09.00 a.m. and 09.30 a.m., when the deceased was in hospital, her mother came to the hospital and the deceased told her that it was this accused, who poured kerosene and set fire to her.

7. Having considered all the above materials, the trial Court convicted the accused for all the charges and sentenced him thereunder. That is how, the accused 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 carefully perused the records.

9. Learned counsel for the appellant would submit that the evidence of P.Ws.1 to 4 cannot be believed, as they are highly interested and motivated. He would further submit that, similarly, the Dying Declarations made by the deceased were tutored by P.W.1 due to previous enmity and, therefore, they cannot be relied upon. The learned counsel further submitted that D.W.1 has stated that at the time of occurrence, the deceased, on seeing the smoke emanating from the house, came running towards his house and he ran with him and they put out the fire by pouring water on the deceased. The learned counsel also submitted that the son of the deceased, who was present at the time of occurrence, was not examined. For these reasons, the learned counsel submitted that the appellant is entitled for acquittal.

10. Learned Additional Public Prosecutor, however, opposed this appeal. According to him, there are multiple Dying Declarations, wherein the deceased had consistently told that it was this accused, who poured kerosene on her and set fire to her. The learned Additional Public Prosecutor further submitted that P.Ws.1 to 3 and 4 have spoken about the motive. The learned Additional Public Prosecutor also submitted that P.W.12's evidence that on 15.06.2006 the deceased had made a complaint against the accused is duly corroborated by the evidence of P.Ws.1 to 4 that the deceased was harassed by the accused. Thus, according to the learned Additional Public Prosecutor, the trial Court was right in convicting the accused under both the charges.

11. We have considered the above submissions. There is no denial of the fact that the marriage between the accused and the deceased was celebrated on 20.01.2006. P.W.12, the then S.I. of Police of All Women Police Station, has stated that on 15.06.2006, the deceased made a complaint against the accused, alleging that he was harassing her. During the enquiry, according to her, the accused appeared in the Police Station, and he agreed to take back the deceased and the issues were settled. Exs.P-14 to P-16 are the records, pertaining to the said proceedings. These documents, coupled with the evidence of P.W.12, would go to establish that within five months of the marriage, the deceased made a complaint against the accused of harassment. There is no reason to reject this part of evidence. Hence, the prosecution has clearly established that the accused started harassing the deceased within a few months of the marriage.

12. P.Ws.1 to 3, who are the family members of the deceased, have reiterated the same. This is further corroborated by an independent witness, namely, P.W.4, Head of Jamath. From the evidence of these witnesses, coupled with the evidence of P.W.12 and the connected records, the prosecution has clearly established that the accused demanded dowry from the deceased and on account of failure of her to bring the same, the accused harassed her consistently. We find no reason to take a different view. Thus, in our considered view, the prosecution has clearly established that the accused had committed the offence punishable under Section 498-A IPC.

13. The alleged occurrence was on 07.09.2009 at 08.45 a.m. On 06.09.2009, during night, the accused demanded the deceased to get Rs.1000/- for whitewashing the house. Since the deceased refused, it resulted in a quarrel. It is the positive case of the prosecution that on 07.09.2009 at 08.45 a.m., there was a quarrel between the accused and the deceased, in which, the accused poured kerosene on the deceased and set fire to her. So far as this occurrence is concerned, there is no eye witness account. The prosecution relies only on the multiple Dying Declarations, made by the deceased.

14. The earliest Dying Declaration is the one, which was made by the deceased to P.W.10, Dr.Tamilselvi. At 12.30 p.m. on 07.09.2009, when the deceased was brought to the hospital for treatment by none else than the accused himself, in the very presence of the accused, the deceased told P.W.10 that her husband poured kerosene on her at her house and set fire to her. This being the earliest Dying Declaration, in our considered view, it should receive weightage. We do not find any reason to reject the same.

15. When the deceased was undergoing treatment, on receiving intimation, P.W.18 the then Judicial Magistrate had gone to the hospital at 01.30 p.m. on 07.09.2009. P.W.9 Dr.Jagan Mohan examined the deceased and certified that she was conscious and in a fit state of mind to give Dying Declaration. P.W.18 made certain queries and from the answers elicited and from the opinion of the doctor, she was satisfied that the deceased was in a fit state of mind to give Dying Declaration. Accordingly, she recorded the Dying Declaration of the deceased at 01.40 p.m. (vide Ex.P-25). In the said Dying Declaration, the deceased again reiterated that it was this accused, who poured kerosene and set fire to her.

16. Learned counsel for the appellant would submit that as spoken to by D.W.1, because she was tutored by her mother, the deceased gave such a false Dying Declaration to P.W.18. The hollowness of this argument can be perceived from the earliest Dying Declaration, given to the doctor, which was long before the arrival of her relatives to the hospital,

wherein the deceased told that it was this accused, who poured kerosene and set fire to her. Therefore, the theory propounded by the accused that because she was tutored by P.W.1, the deceased gave a false Dying Declaration to P.W.18, cannot be accepted and the same is, accordingly, rejected.

17. The next Dying Declaration is the statement made by the deceased to P.W.17, in the presence of P.W.14. It was on the basis of the said statement F.I.R. was registered at 03.15 p.m. on 07.09.2009. In that statement (vide Ex.P-23), the deceased had reiterated that it was this accused, who poured kerosene and set fire to her. There is no reason to reject this Dying Declaration also. Thereafter, the family members, namely, P.Ws.1 to 3 went to the hospital and when they enquired the deceased, she, once again, reiterated that it was this accused, who poured kerosene and set fire to her. Thus, on all those occasions, when the deceased was trying to speak, she told that it was this accused, who poured kerosene and set fire to her. As we have already pointed out, the argument that the deceased made such a statement falsely out of tutoring by P.W.1 cannot be accepted at all. The evidence of D.W.1 that the deceased was tutored by P.W.1 is only a summary rejection. These all Dying Declarations are voluntary and not out of any tutoring. There is no inconsistency in these Dying Declarations. There is also no doubt regarding the mental fitness of the deceased. Thus, from these Dying Declarations, we hold that the prosecution has clearly established that it was this accused, who poured kerosene and set fire to the deceased.

18. Now, the question is, what was the offence that was committed by the accused, by the said act of pouring kerosene and setting fire to the deceased ?

19. A perusal of the Dying Declarations would go to show that on 06.09.2009, during night, there was a quarrel between the accused and the deceased, because, the accused wanted the deceased to get Rs.1000/- from her house for whitewashing the house, on account of fast approaching Ramjan festival. On 07.09.2009, in the morning also, there was a quarrel between them. In that quarrel, according to the Dying Declaration, the deceased wanted to leave the matrimonial home and to go to her parental home. The accused told her not to do so. He wanted her to live with him as his wife. Despite that, the deceased quarrelled to leave the matrimonial home. It was only in that quarrel, provoked by the utterances of the deceased, the accused had lost his mental balance, poured kerosene and set fire to her. The conduct of the accused in rushing to hospital immediately to save the deceased would go to show that he had an intention to save the deceased. Thus, the act of the accused would fall under first exception to Section 300 IPC. Therefore, he is liable to be punished under Section 304 (I) IPC.

20. Now, turning to the quantum of punishment for culpable homicide not amounting to murder, the accused is a young man and has the chances of reformation. He had no bad antecedents. The occurrence was not premeditated. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for ten years and to pay fine of Rs.5,000/- for the offence under Section 304 (I) IPC would meet the ends of justice. So far as the conviction and sentence for the offence under Section 498-A IPC is concerned, they are liable to be confirmed.

21. In the result, this Criminal 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 for the offence under Section 304 (I) IPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for four weeks. The conviction and sentence imposed on the appellant for the offence under Section 498-A IPC is hereby confirmed.

22. It is hereby directed that the above sentences shall run concurrently and the period of sentence already undergone by the appellant shall be set off, as required under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

dixit

To

1.The II Additional Sessions Judge,
Erode.

2. The Judicial Magistrate
Erode

3. Do thro the Chief Judicial Magistrate
Erode

4. The Deputy Superintendent of Police,
Erode Town Sub Division,
Erode.

5. The Superintendent
Central Prison,
Coimbatore

6. The Public Prosecutor,
High Court, Madras

7. The District Collector
Coimbatore

8. The Director General of Police
Mylapore, Chennai

1 cc to M/s. Ilayaraja Kandasamy, Advocate, Sr. 32527

CRL.A.No.450 OF 2014

MP (CO)
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