

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.06.2016

CORAM

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

CRL.A.No.486/2014

Arivumani @ Arul Mani @ Appu ..Appellant/sole
accused

Vs

State by
The Inspector of Police,
J.9 Thuraipakkam Police Station,
Chennai-97. ..Respondent

Appeal filed u/s.374(8) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District Judge, Chengalput, made in S.C.No.16 of 2009 dated 25.08.2014.

For Appellant : Mr.B.Vijay,
Legal Aid Counsel

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.16 of 2009 on the file of the learned Additional District Judge, Chengalput. He stood charged for offence under Section 302 of IPC. By judgment dated 25.08.2014, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 6 months for the said offence. 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:

(a) The deceased in this case was one Mrs.Nandhini. The accused is her husband. The deceased was working in a private company. The accused wanted her to stop going for the said job. But the deceased declined. This developed frequent quarrels between them. In due course of time, the accused also started

taking drinks. This was yet another cause for the frequent quarrels between them. Thus, according to the case of the prosecution, the accused had developed an ill-feeling against the deceased. This is stated to be the motive for the occurrence. It is alleged that on 08.04.2008 at about 09.00 p.m., when the deceased was alone at her house, there arose a quarrel between the deceased and the accused and at the end of the said quarrel, the accused poured kerosene and set fire. The deceased, while in flames, cried for help. The accused ran away from the scene of occurrence.

(b) The deceased was immediately taken to Kilpauk Medical College Hospital at Chennai at 10.00 p.m. on 08.04.2008. P.W.6 Doctor Rajasekar examined her. He told that at that time, she was conscious. She told that at about 9.00 p.m., at her house, her husband poured kerosene and set fire. She was brought by her father-in-law Gunasekaran. P.W.6 admitted her as inpatient and gave intimation to the police.

(c) P.W.11 Tmt.Jebachitra, the then Sub-Inspector of Police, went to the hospital and recorded the statement of the deceased. The doctor certified that she was in a fit state of mind. On returning to the police station, she registered a case in Crime No.435 of 2008 under Section 307 of IPC against the accused at 02.20 a.m. on 09.04.2008. Ex.P.9 is the statement of the deceased. Ex.P.10 is the First Information Report. She forwarded both the documents to court which were received by the learned Magistrate at 02.45 p.m. on 09.04.2008.

(d) On intimation from the police, P.W.9 Thiru Muruganandham, the learned V Metropolitan Magistrate, Chennai, went to the hospital at 12.25 a.m. on 09.04.2008. One Doctor K.Boopathi was attending on the deceased. He gave opinion that the deceased was conscious, oriented and in a fit state of mind to make a dying declaration. P.W.9, to satisfy his judicial conscience, raised certain queries. From the answers elicited from her and from the opinion of the Doctor, he was fully satisfied that the deceased was in a fit state of mind to make a dying declaration. Accordingly, he recorded the dying declaration in which the deceased told that it was this accused who poured kerosene and set fire. The deceased, who was undergoing treatment in the hospital, died on 03.30 a.m. on 09.04.2008.

(e) P.W.12, the Inspector of Police, then, altered the case into one under Section 302 of IPC. He proceeded to the place of occurrence, and prepared an Observation Mahazar and a Rough Sketch. Then, going over to the hospital, he conducted inquest on the body of the deceased and handed over the same for postmortem.

(f) P.W.7 Doctor Udhayasankar conducted autopsy on the dead body of the deceased on 09.04.2008 at 05.30 p.m. He found the following injuries:

'External Injuries : Superficial burns over the face, both sides of the chest, abdomen, right hand in front and back, left upper arm in front and back, both legs in front and back.

Posteriorly : Back (83% burns - shock)

Heart : All the chambers contain clotted blood.

Lungs, Larynx, Trachea, liver, spleen, kidneys : Normal c/s. Congested.

Hyoid bone : Normal and in tact.

Stomach : 100 ml of black colour fluid present.

Bladder, uterus : Normal and empty.

Pelvis, skull, brain and spinal column : Normal and in tact.'

Ex.P.5 is the Postmortem Certificate. According to him, the death of the deceased was due to 83% of burn injuries found on the body.

(g) P.W.12 recovered the material objects found at the place of occurrence and he arrested the accused on the same day at 11.40 a.m. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden a Kerosene Can. In pursuance of the same, the accused produced the Kerosene Can from his house and the same was recovered under a Mahazar. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 16 documents and 3 material objects were also marked. On the side of the accused 4 documents were marked as Ex.D.1 to Ex.D.4.

4. Out of the said witnesses, P.Ws.1 to 3 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.5 has turned hostile. P.W.6 has spoken about the treatment given to the deceased at the hospital. P.W.7 has spoken about the postmortem conducted by him and his final opinion regarding cause of death. P.W.8 has spoken about the arrest of the accused and the consequential recovery of the Plastic Can. P.W.9 has spoken about the judicial dying declaration recorded by him. P.W.10 has spoken about the fact that he took the dead body of the deceased to the hospital and handed over the same for

postmortem. P.W.11 has spoken about the statement recorded from the deceased and the case registered upon the same by her. P.W.12 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. When this appeal came up for hearing on 13.06.2016, since the learned Counsel for the appellant has withdrawn his appearance, we appointed Mr.B.Vijay, learned Counsel as Legal Aid Counsel to argue the case for the appellant.

7. We have heard the learned Legal Aid Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In this case, as we have already stated, the prosecution relies only on the dying declarations made. The earliest dying declaration was made to P.W.6 Doctor Udhaya Shankar by the deceased at Kilpauk Medical College Hospital. At that time, the deceased was conscious. She told that at 09.00 p.m., at her house, her husband poured kerosene and set fire. There is no indication that she was tutored by anybody. Therefore, we do not find any reason to reject this dying declaration made by the deceased at the earliest point of time.

9. The next dying declaration is the one recorded by P.W.11, the Sub-Inspector of Police. She went to the hospital and recorded the statement of the deceased under Ex.P.9. On returning to the police station, she registered the case at 02.20 a.m. on 09.04.2008. In the said statement also, the deceased has stated that it was her husband, who poured kerosene and set fire. So far as this dying declaration is concerned, we do not find any reason to doubt the same.

10. The last one is the judicial dying declaration recorded by P.W.9. P.W.9 went to the hospital at 12.25 a.m. One Doctor K.Boopathi, who was attending on her, gave a certificate that the deceased was fully conscious, oriented and in a fit state of mind to make a statement. P.W.9 made certain queries and from the answers elicited and also from the opinion of the Doctor, he was fully satisfied that the deceased was in a fit state of mind to make a dying declaration. Thereafter only, he recorded the dying declaration in which the deceased told that her husband poured kerosene and set fire.

11. The learned Counsel for the appellant would submit that the Doctor who gave the certificate has not been examined and the same is fatal to the case of the prosecution.

12. But, in our considered view, it is not so. It is not as though the learned Magistrate was satisfied that the deceased was in a fit state of mind on the basis of the certificate issued by the Doctor alone. The learned Magistrate made certain queries, assessed the mental state of the deceased and having satisfied that the deceased was in a fit state of mind, he recorded the statement. Thus, the satisfaction of the Magistrate is well founded. From this, we hold that the said dying declaration is believable and the said dying declaration by itself can be the sole foundation for conviction. Thus, in these three dying declarations which have been made consistently without any tutoring, the prosecution has clearly proved that it was this accused who poured kerosene and set fire and caused the death of the deceased.

13. Now the question is as to what was the offence that the accused had committed by the said act. In the dying declarations made to the police and to the learned Magistrate, the deceased has stated that the accused returned to the house at 09.00 p.m. in a drunken state. The deceased questioned the same. This resulted in a quarrel. The quarrel went on for quite some time. Only in the said quarrel, the accused had poured kerosene and set fire. The dying declarations themselves would indicate that in the quarrel, the accused was provoked by the deceased by her words. The provocation was sudden. Thus, having lost his mental balance, on account of the grave and sudden provocation caused by the deceased, he had poured kerosene and set fire. Thus, the act of the accused would squarely fall within the third limb of Section 300 of IPC and the first exception to Section 300 of IPC. Therefore, he is liable to be punished under Section 304-I of IPC.

14. Now turning to the quantum of punishment, the accused at the time of the occurrence was hardly aged 22 years. He has got no bad antecedents. There are lot of chances for his reformation. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks would meet the ends of justice.

15. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant by the trial court are set aside and instead, he is convicted under Section 304-I of IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks. The

period of sentence already undergone by the accused in connection with this case shall be set off under Section 428 of Cr.P.C.

16. While parting with the case, we appreciate the services rendered by Mr.B.Vijay, the learned Counsel, who argued the case on behalf of the appellant as a Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
J.9 Thuraipakkam Police Station,
Chennai-97.
2. The Additional District Judge,
Chengleput.
3. The Principal Sessions Judge, Chenglepet.
4. The Superintendent Central Prison-I, Chennai.
5. The Judicial Magistrate Alandur.
6. The Chief Judicial Magistrate, Tambaram.
7. The Public Prosecutor,
High Court, Chennai.
8. Copy to:
The Legal Services Authority,
High Court, Chennai.
9. The Section Officer, Criminal Section,
High Court, Madras.

+ 1 cc to Mr.B. Vijaya, Advocate Sr.34970

Cr1.A.No.486/2014

KS(CO)
EU 21.07.16