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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.73 of 2014

P.Saravanan

..Appellant/sole Accused

vs.

State by Inspector of Police
Pochampali Police Station
Pochampalli.
[Crime No.367/2010]

..Respondent/Complainant

Common Prayer :- Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the conviction and sentence imposed on the appellant by judgement dated 23.07.2013 in S.C.No.24 of 2012 on the file of the Principal District Sessions Court, Krishnagiri District, Krishnagiri and against him from all the charger.

For Appellant : Mr.D.Ashokkumar
Legal Aid counsel

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The sole accused in S.C.No.24 of 2012 on the file of the Principal District and Sessions Court, Krishnagiri, is the appellant herein. The Trial Court framed a charge against the accused for an offence under Section 302 IPC. By judgment, dated 23.07.2013, the Trial Court convicted the accused for the above charge and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo six months Simple Imprisonment. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

[2] The case of the prosecution, in brief, is as follows:-

The deceased in this case is one Jayanthi, she is the wife of the accused, they have no issues, the accused is a drunkard and he used to quarrel with the deceased every day. On 07.08.2010, at about 09.30 p.m., the accused poured kerosene on the deceased and set fire on her. The neighbours, after hearing noise, doused the



fire and sent her to the Government Hospital, Pochampalli and she was admitted there as an in-patient.

[3] On receipt of a memo from the Government Hospital, P.W.9 [Tr.Arjunan], the Inspector of Police proceeded to the Hospital and obtained a statement from the deceased at about 11.30 p.m., and thereafter, First Information Report was registered in Cr.No.367 of 2010 under Section 307 IPC [Ex.P14]. After registration of the FIR, P.W.9 commenced the investigation, and on 08.08.2010, at about 6.00 a.m., he proceed to the scene of occurrence and prepared an Observation Mahazar and also a Rough Sketch in the presence of the witnesses. He also recovered (1) Burnt cloth [M.O.1], (2) a 5 litre Plastic Can with small quantity of kerosene [M.O.2] (3) Half Burnt Pillow [M.O.4] (4) a Match Box [M.O.5] (5) Cement Slab [M.O.6] and (6) Mat [M.O.7] in the presence of P.W.3 [Village Administrative Officer]. He also obtained statements from the witnesses. Since the condition of the deceased was very serious, she was referred to the Government Hospital, Dharmapuri. P.W.4-the learned Judicial Magistrate, Dharmapuri, on receipt of memo from the hospital, recorded the Dying Declaration of the deceased. On 08.08.2010 at about 4.35 p.m., the deceased died due to injuries. The Inspector of Police [P.W.9] altered the First Information Report into u/s.302 IPC. Since the death has occurred within seven years of marriage, he sent a request to the Revenue Divisional Officer, Dharmapuri [P.W.7] for conducting inquest. The Revenue Divisional Officer, Dharmapuri [P.W.7] conducted inquest on the dead body in the hospital, in the presence of panchayatdars, on 09.08.2010, between at 12.45 p.m., and 01.15 p.m. The Inquest Report is marked as Ex.P11. Thereafter, P.W.6 [Dr.Subash], the Doctor in Government Hospital, Dharmapuri, conducted post-mortem on the dead body and issued Ex.P9- Postmortem Report, wherein the following injuries were found:-

"Appearances found at the post-mortem:

A body of female lying on its back, arm by one side
Eye closed, mouth closed, Teeth 8/8:8/8

External appearance: 100% burns all over the body.

Internal Examination: Hyoid Bone intact ribs (N), Heart empty, congested, Lungs congested, liver congested, spleen congested, stomach with content brown colour liquid 50ml found in the stomach. Bladder empty, kidney congested, Uterus normal.

Skull Brain: Brain congested, skull bare (N)

Following vi bearer preserved liver, kidney, stomach and intestine with contents, Hyoid Bone.

Opinion : The deceased would be appear to have died at 20 to 24 hours prior to Autopsy. The cause of death pending due to chemical analysis report."

[4] P.W.9 arrested the accused on 26.12.2010 at 1.00 p.m.. On such arrest, the accused has given a voluntarily confession statement and thereafter, he was sent to Judicial custody. Since the accused also suffered extensive injuries, he was also admitted in the Government Hospital, Pochampalli. P.W.8 [Doctor], who treated the accused, has issued an accident Register



[Ex.P12] that the accused had suffered 36% of burn injuries. Since the deceased died within 7 years of marriage, the Deputy Superintendent of Police, Uthankarai [P.W.10-Tr.Saminathan] commenced the investigation and recorded the statement of the witnesses. Based on the investigation, he came to know that the death of the deceased was not due to any dowry harassment, hence he sent the case records to P.W.11[Tr.Kasinathan], Inspector of Police. P.W.11, on receipt of the case records, continued the investigation and after examining other witnesses, and on receipt of chemical analysis report and post-mortem report, laid charge sheet against the accused.

[5] Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 19 documents were exhibited, besides 7 Materials Objects.

[6] Out of the witnesses examined, P.W.1 is the mother of the deceased. According to her, since the deceased does not have any issue, the accused used to beat her and he driven her to her parental home. After sometime, she went back to the matrimonial home, where the accused poured kerosene and set fire on her. After hearing the news, they rushed to the Government Hospital, Dharmapuri, and saw the deceased suffered with burn injuries and the deceased said to have informed them that the accused demanded money but she refused, hence, he poured kerosene and set fire on her. P.W.2 is the sister of the deceased. She has also reiterated the evidence of P.W.1. P.W.3 is the Village Administrative Officer. He is a witness to the preparation of the observation mahazar and recovery of M.O.1 to M.O.7 under Ex.P2. P.W.4 is the learned Judicial Magistrate No.II, Dharmapuri. According to him, on receipt of the memo from the hospital, he proceeded to the hospital and recorded dying declaration of the deceased, after being satisfied and confirming that she is fit and conscious state of mind to give dying declaration. P.W5 Doctor working in the Government Hospital, Dharmapuri. He sent a memo to the learned Judicial Magistrate No.II, Dharmapuri for recording the dying declaration and he also certified that she is fit and conscious state of mind to give dying declaration. P.W.6 is the Doctor, who conducted post-mortem on the dead body and found that the deceased suffered 100% burn injuries. He has also given opinion that the deceased appears to have died due to shock and burn injuries. P.W.7 is the Revenue Divisional Officer, who conducted inquest on the dead body and prepared the inquest report. P.W.8 is the Doctor in Government Hospital, Pochampalli. He examined the accused and found extensive injuries all over his body and has given Accident Register Ex.P12. According to him, the accused sustained 36% burn injuries and the injuries are serious in nature.

[7] P.W.9 is the Inspector of Police. On receipt of the information from the hospital, he proceed to the hospital and



[8] P.W.10 is the Deputy Superintendent of Police, Uthankarai. He proceeded with the investigation and recorded the statement and on investigation, he found that the death was not happened due to dowry harassment and hence, he handed over the case records to the Inspector of Police-P.W.11, who continued the investigation, recorded the statement of witness and laid charge sheet against the accused.

[10] Having considered the above materials, the Trial Court convicted and sentenced the accused as mentioned in para No. 1 of the judgment. Challenging the conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

[12] This is a case based on circumstantial evidence. The prosecution mainly relied upon the dying declarations of the deceased. There are two dying declarations available on record. The first dying declaration was given to P.W.9 [Inspector of Police], wherein the deceased has stated that on 07.08.2010 at about 09.30 p.m., she was sleeping and at that time, the accused came from his work and took a plastic can containing kerosene, scolded her stating that it was not possible for him to live with her without any issues and poured kerosene, set fire on her. Immediately, the neighbours rushed to the house and sent her to the Government Hospital, Pochampalli. But, in the Judicial dying declaration[Ex.P3], she has stated that the accused is a drunkard and on the date of occurrence at about 08.00 p.m., she was watching T.V., the accused demanded money from her and she refused to give him, so he poured kerosene and set fire on her. Apart from that, the prosecution did not examine the Doctor, who admitted the deceased in the Pochampalli hospital and did not mark the accident register. Hence, the earlier statement of the deceased was not known.

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his wife at about 09.30p.m. On 07.08.2010.

[14] So far as the dying declarations given by the deceased, there are inconsistencies in the statement of the deceased. In the first dying declaration, the deceased stated that while she was sleeping, the accused took kerosene can and when she questioned him, he replied that it was not possible for him to live with her without any issues and he poured kerosene and set fire on her. In the Judicial dying declaration, she has stated that while she was watching TV, the accused demanded money and since she refused, he set fire on her. The above inconsistency in the dying declarations creates a doubt in the genuineness of the dying declaration. Hence, we are of the considered view that it is highly unsafe to rely upon the dying declarations to convict the appellant.

[15] Apart from that, there is extensive burn injuries on the accused and as per the medical evidence, the injuries are very serious injuries. We cannot rule out the possibility of the accused sustaining injuries, while he tried to save the deceased. It is also not known, as to who had taken the deceased to the hospital as the accident register of the deceased was not marked and Doctor was also not examined.

[16] Taking into consideration the above circumstances, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the accused is entitled for acquittal.

[17] In the result, appeal is allowed and conviction and sentence imposed on the appellant by the learned Principal District Sessions Judge, Krishnagiri, in S.C.No.24 of 2012, by the judgment, dated 23.07.2013, are hereby set-aside. The appellant is acquitted of all the charges levelled against him. Fine amounts, if any, paid by the appellant, shall be refunded to him. Bail bonds, if any, shall stand discharged.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal District and Sessions Judge, Krishnagiri.
- 2.The Judicial Magistrate, Pochampalli.
- 3.The Chief Judicial magistrate,
Krishnagiri.



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4.The Inspector of Police,
Pochampalli Police Station,
Pochampalli.

5.The Superintendent, Central Prison, Vellore.

6.The Secretary,
Tamil Nadu Legal Aid Service authority,
High Court, madras.

7.The Public Prosecutor, Madras.

+1 cc to Mr.D.Ashokkumar, advocate,sr.35803.

vgi(co)
krd 4/8

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