

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.06.2016

CORAM:

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

Cr1.A.No.126 of 2015

Lakshmanan ... Appellant/Accused

vs.

State,by
The Inspector of Police,
Veppanapalli Police Station,
Krishnagiri District.
Crime No.17 of 2011 ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 06.01.2014 passed by the learned
Principal District Judge, Krishnagiri, in S.C.No.51 of 2012.

For Appellant : Mr.B.Manoharan for
Mr.K.Thiruvengadam
For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions Case No.51 of 2012, on the file of the learned Principal District Judge, Krishnagiri. He stood charged for an offence under Section 302 of IPC. The Trial Court, by judgement, dated 06.01.2014 convicted the appellant/accused for the offence under Section 302 of IPC, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo simple imprisonment for six months for the offence under Section 302 of IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) One Mallammal, the deceased in this case, is wife of

P.W.1. One Anganathappa is their neighbour. While Anganathappa was demolished his house for reconstruction. During the above demolition work, he demolished the compound wall of the deceased as well and hence there was a dispute arose between them. On 28.01.2011, at about 6.00 pm., there was a wordy quarrel between Anganathappa and deceased family. Accused Lakshmanan, brother-in-law of Anganathappa, joined the quarrel in support of his brother-in-law. The deceased scolded him. Being agitated over the same, in order to murder her, on 29.01.2011, at about 4.00 am., the accused poured kerosene on her and set her on fire. On hearing the noise, P.W.1, husband of the deceased, and P.W.2, daughter in law of the deceased, rushed the place of occurrence and took her to the Government Hospital, Krishnagiri. Where, D.W.1, Doctor, admitted the deceased and sent a memo Ex.D1 to the respondent Police Station. P.W.7, Assistant Surgeon, working in the Government Hospital, Krishnagiri, sent a memo to the Judicial Magistrate Court, Krishnagiri, for recording dying declaration.

(ii) On receipt of the memo, P.W.5, learned Judicial Magistrate No.II, Krishnagiri visited the Government hospital at about 8.20 a.m. and recording the dying declaration of the deceased. At that time, the deceased stated that there was a dispute between the deceased and the accused and the accused poured kerosene and set fir on her. As she was not able to speak further, the learned Judicial Magistrate stopped recording the dying declaration. The Doctor gave a certificate Ex.P13 to the effect that the deceased was not able to speak further.

(iii) Subsequently, at about 10.00 a.m, the deceased succumbed to injuries. Thereafter, on 29.01.2011 at about 9.00 am., P.W.1, went to the respondent police and gave a complaint, Ex.P1, stating that the accused poured kerosene on his wife and set her on and she succumbed to injuries at 10.00 a.m. The above complaint was registered by the Special Sub Inspector of Police, in Crime No.17 of 2011 for the offence under Section 302 IPC and prepared an first information report, Ex.P14, and sent the same to the Judicial Magistrate Court and copies to the higher officials.

(iv) On receipt of the first information report, P.W.8, Inspector of Police, Krishnagiri Taluk Police Station, commenced investigation. On 30.01.2011 at about 7.00 a.m. he conducted inquest over the dead body at the Government Hospital, in the presence of panchayatdars between 9.00 a.m., and 11.00 a.m. and prepared an inquest report, Ex.P15 and sent the dead body for post-mortem through Head Constable one Arul. Thereafter, he visited the scene of occurrence prepared an observation mahazar, Ex.P2 and drew a rough sketch Ex.P16 in the presence of witnesses. On 30.01.2011 at about 11.00 a.m., he arrested the accused in the presence of witnesses and on such arrest, the accused voluntarily gave a confession statement and based on the

disclosure statement, P.W.8 recovered 10 liters plastic can, M.O.5 and also recovered inskirt of the deceased, M.O.6 in the presence of witnesses. Then, he remanded the accused to the Judicial custody.

(v) P.W.6, Assistant Surgeon, was working at the Government Hospital, Krishnagiri, on 30.01.2011 at about 12.15 p.m., conducted postmortem on the dead body and found the following injuries.

External Injuries:

Charring of face, chest wall, back of chest wall, both upper limbs, frontier and back of abdomen, lower limbs up to the thighs in both legs.

Internal examination: Ribs-intact, Heart c/s pare contained about 100 ml of cloned blood, lungs - c/s pale, smoke malenials seen over the extend surface of lungs. Hyoid bone intact. Stomach 150 ml of partially digested rice. Liver 1200 gms. Spleen c/s pale 90 gm each. Kidney 90 gms each c/s pale should intact. Brain 130 gms normal.

He opined that the death would have occurred 24 to 28 hours prior to autopsy. He given postmortem certificate Ex.P.11. Then, P.W.8 handed over the investigation to P.W.9, the regular Inspector of Police. P.W.9 examined the Doctor who conducted postmortem and other witnesses and recorded their statements. After completing the investigation, P.W.9 filed charge sheet before the concerned Judicial Magistrate Court.

3. Based on the above materials, the Trial Court framed charges against the accused as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 9 witnesses were examined and 20 documents and 6 material objects were marked. On the defence side, the Doctor, who admitted the deceased in the Government Hospital, Krishnagiri, was examined as D.W.1 and memo sent by him to police was marked as Ex.D1.

4. Out of the above witnesses, P.W.1 is the husband of the deceased. According to him, on hearing the noise of the deceased, he along with P.W.2, their daughter-in-law rushed to the scene of occurrence and took the deceased to the Government Hospital, Krishnagiri, in an ambulance. P.W.2 has stated that she also accompanied P.W.1 to the Hospital. P.W.3 is observation mahazar witness. He is also witness to the recovery of burnt saree, inskirt and jacket of the deceased. P.W.4 turned hostile. P.W.5 is the learned Judicial Magistrate, who recorded the dying declaration of the deceased. P.W.6 is the Doctor, working in Government Hospital, Krishnagiri, who conducted postmortem on the dead body and gave postmortem certificate, Ex-P11. P.W.7 is

another Doctor, working in the Government Hospital, Krishnagiri who gave intimation to the learned Judicial Magistrate for recording dying declaration. P.W.8, the Investigation Officer, has stated that he took the case for investigation, arrested the accused, recovered the materials objects. P.W.11, Inspector of Police, successor to P.W.8, continued the investigation and after completion of investigation filed final report against the appellant/accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he examined D.W.1, Doctor, who admitted the deceased in the Government Hospital at Krishnagiri and also given intimation Ex.D1 to the respondent police.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.B.Manoharan, learned counsel for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. The learned counsel appearing for the appellant would submit that there was no eye witness in this case and the entire case was based on the dying declaration of the deceased. He further submitted that the dying declaration of the deceased cannot be relied upon for convicting the accused, as she was not in a fit state of mind and not in a position to give dying declaration as it was evident from the evidence of P.W.5, the learned Judicial Magistrate and P.W.7, the Doctor. He further contended that there was an enormous delay in giving the complaint. He elaborated his submission by stating that the occurrence is said to have taken place at about 4.00 a.m., the deceased has been admitted in the Government Hospital, Krishnagiri at about 6.50 a.m., she has given dying declaration at about 8.20 a.m., she died at about 10.00 a.m, but the complaint has been given only at 9.00 a.m., on 29.01.2011 and therefore the long delay in filing the first information report and sending the same to the Judicial Magistrate Court creates a doubt with regard to the case of prosecution. Hence, he prays for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor would submit that the dying declaration of the deceased is true and voluntary, which has been properly recorded by the learned Judicial Magistrate, hence conviction has been safely given by the trial Court based on the dying declaration of the deceased. Therefore, he prays for dismissal of this appeal.

10. Admittedly, in this case, there was no eye witness and the entire prosecution case is based on the dying declaration given by the deceased. It is no doubt true that dying declaration can be solely relied upon for convicting a person, provided the same is given by the deceased in a conscious and fit state of mind and it is voluntary. Now, in the case on hand, the learned Judicial Magistrate has stated that recording the dying declaration of the deceased, after obtaining certificate from the Doctor as she was a fit state of mind. But, recording the dying declaration, the deceased was not able to speak further and hence the learned Judicial Magistrate had stopped recording the dying declaration. The Doctor has also given a certificate that though the deceased is conscious, she was not able to speak further. It creates a doubt as to whether the deceased was conscious and in a fit state of mind to give dying declaration.

11. Apart from that, there is a long delay in filing the complaint. The occurrence is said to have taken place on 29.01.2011 at about 4.00 a.m. and immediately the deceased was taken to the hospital at about 6.40 am., the learned Judicial Magistrate has recorded the dying declaration of the deceased and it is also the evidence of Doctor D.W.1 that she admitted the deceased in the hospital and sent a memo immediately to the police at about 10.30 am. But, P.W.1 has given the complaint only at about 9.00 a.m. on 29.01.2011 and the first information report has reached the learned Judicial Magistrate only on 30.01.2011 at about 9.00 a.m. Hence, there is long delay in filing the first information report and also there is delay in sending the first information report to the Judicial Magistrate Court, which has not been properly explained by the prosecution, which, in our opinion, creates a doubt in the prosecution case.

12. So far as the dying declaration is concerned, there is no other corroborating evidence, hence, we are of the considered view that it is not safe to rely upon the dying declaration alone for convicting the accused. In the absence of any other evidence, we cannot sustained the conviction and sentence awarded by the trial Court.

13. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned Principal District Judge,

Krishnagiri in Sessions Case No.51 of 2012, dated 06.01.2014 is set aside and the appellant/accused is acquitted of the charges levelled against him and bail bond if any executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge,
Krishnagiri District.
- 2 The Judicial magistrate, No.2, Krishnagiri
- 3 do through the Chief Judicial Magistrate,
Krishnagiri
- 4.The Inspector of Police,
Veppanapalli Police Station, Krishnagiri District.
- 5 The Superintendent, Central Prison, Vellore
- 6 The District Collector, Krishnagiri District
- 7 The Director General of Police, Mylapore
- 8.The Public Prosecutor,
High Court, Madras.
- 9 The Section Officer, Criminal Section, High Court, Chennai 104

+1cc to Mr.K. Thiruvungadam, Advocate, S.R.No.31609

pvs (CO)
md(05/01/2017)

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