

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.06.2016

CORAM:

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

CrI.A.No.236 of 2015

S.Ramu

...Appellant/Accused

vs.

State,by

The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.
(Crime No.135 of 2009)

...Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 11.07.2013 passed by the learned
District and Sessions Judge, Nagapattinam, in S.C.No.146 of 2010.

For Appellant : Mr.L.Baskaran
(Legal Aid Counsel)

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellant/accused in this appeal is the sole accused in Sessions Case No.146 of 2010, on the file of the learned District and Sessions Judge, Nagapattinam. He stood charged for an offence under Section 302 of IPC. The Trial Court, by judgement dated 11.07.2013, 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.500/-, in default, to undergo rigorous imprisonment for two years. 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) The deceased is the wife of the accused. Both of them were residing at Middle Street, Akkaraipettai in Nagapattinam. The accused was a drunkard and every day he quarrelled with the deceased and he also suspected the fidelity of the deceased. On 11.03.2009 at about 8.30 p.m., P.W.1, mother of the deceased went to the deceased house, at the time, she saw the deceased coming out of her house with fire flames on her body and the accused pretending to douse the fire. Immediately, they took the deceased to the Government Hospital, Nagapattinam in an auto. The accused also went along with them.

(ii) P.W.19, Doctor, working in the Government Hospital, Nagapattinam, admitted the deceased in the Hospital and issue an Accident Register, Ex.P14, wherein, it is mentioned that the victim alleged that she burnt herself around 9.00 p.m., in her residence at Akkaraipettai.

(iii) On the next day morning, at about 9.30 a.m., P.W.16, Sub Inspector of Police, working in the Nagapattinam Town Police Station, on receipt of memo from the Government Hospital, went to the hospital and obtained a statement, Ex.P.10 from the deceased. Based on the said statement, he registered a case in Crime No.135 of 2009 for the offence under Section 307 IPC. He prepared Ex.P12 FIR and sent the same to the Judicial Magistrate Court, and copies of the same to the higher police officials, on 13.03.2009.

(iii) P.W.17, Inspector of Police, working in the Nagapattinam Town Police Station, on receipt of FIR, reached the scene of occurrence and prepared an Observation Mahazar, Ex.P2, drew a Rough Sketch Ex.P12 and also recovered a plastic can M.O.3 and Match Box, M.O.4 in the presence of witnesses, under Ex.P3 seizure mahazar. He examined witnesses and recorded their statements. On the same day, at about 4.00 p.m., he went to the Government Hospital and recorded the statement of the deceased. Thereafter, he recovered M.O.1, Burnt Saree and M.O.2 Burnt inskirt from the body of the deceased in the presence of P.Ws.1 and 2. On 15.03.2009 at about 3.30 p.m., he arrested the accused near the Railway gate at Akkaraipettai, and on such arrest, he gave a voluntary confession statement. Thereafter, P.W.17 sent the accused to judicial custody. Subsequently, on 16.03.2009, the deceased succumbed to injuries. Hence, P.W.17 altered the FIR into Section 302 IPC, prepared altered FIR Ex.13 and sent the same to the Revenue Divisional Officer, Nagapattinam.

(iv) In the meantime, P.W.14, learned Judicial Magistrate No.I, Nagapattinam, on receipt of the memo from the Hospital, on 11.03.2009, at about 10.35 p.m, went to the hospital and recorded the dying declaration of the deceased, wherein, she has stated that her husband poured kerosene on her and set her on fire. Ex.P7 is the dying declaration recorded by P.W.14.

(v) On 16.03.2013, P.W.7, Doctor, working in the Government Hospital, Nagapattinam, conducted post mortem on the dead body of the deceased and found the following injuries.

External Injuries:

80% Partial thickness burn (Sparing the distal 2/3rd of (R) lower limb, distal 1/3rd of left lower limb.

Internal Injuries:

Abdomen - Stomach - Distended contains 50 ml of yellowish fluid, Liver - 1550 gms c/s congested. Spleen - 120 gm c/s congested. Kidney each 150 gms c/s congested/Intestine empty, bladder - empty, uterus - empty. Chest: Heart 250 gms c/s congested, Lungs - R 500 gm, L 450 gm carbon soot and in both and sent the samples. Hyoid bone: Intact skull - Brain meninges 1400 gms, Spinal cord intact.

He opined that the deceased would have appeared to have died due to external burn injuries. He issued a post mortem certificate, Ex.P4. P.W.20, another Inspector of Police, working in the Town Police Station, Nagapattinam, continued the investigation, obtained statement from the Doctor who conducted the postmortem, and other witnesses and on completion of investigation, filed the final report before the Judicial Magistrate Court, on 30.08.2009.

3. 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 20 witnesses were examined and 16 documents and 4 material objects were marked.

4. Out of the said witnesses, P.W.1 is the mother of the deceased. According to her, on 11.03.2009 at about 8.30 p.m., she went to the house of the deceased, at the time, she saw the deceased coming out of her house with fire flames on her body and also saw the accused pretending to douse the fire. Then, they took the deceased and admitted her in the Government Hospital, Nagapattinam. P.W.2, sister of the accused has spoke about the quarrel between the accused and the deceased. According to her, she also accompanied the deceased to the hospital. Her further evidence was that at the time of admission, the deceased told the Doctor that she herself poured kerosene on her body and tried to commit suicide. P.W.3, another sister of the deceased has also accompanied the deceased, when she was taken to the hospital. P.W.4 is a neighbour of the deceased and he has spoken about the quarrel between the accused and deceased. According to him, on 11.03.2009, he met the

deceased in the Hospital and at that time, the deceased told him that her husband poured kerosene on her and set her on fire. P.W.6 is also a neighbour of the deceased. He has also spoken about the quarrel between the accused and the deceased. P.W.7 is the Doctor working in the Government Hospital, Nagapattinam. He has stated that he conducted post mortem on the dead body of the deceased and issued post mortem certificate, Ex.P.4. P.W.8 is a neighbour of the deceased. He has also spoken about the quarrel between the accused and the deceased. P.W.9 is the Head Constable who conveyed the death information. P.W.10, another Head Constable received the death intimation. P.W.11, yet another Head Constable, accompanied the body and identify the body for post mortem. P.W.12, Head Constable, submitted the FIR to the Judicial Magistrate Court. P.W.13 is the Revenue Divisional Officer, Nagapattinam, who conducted inquest over the dead body in the presence of panchayatars and prepared Inquest Report Ex.P5. P.W.14, learned Judicial Magistrate No.I, Nagapattinam has recorded the dying declaration, Ex.P7. P.W.15, Assistant Director, working in the Forensic Department, has examined the material objects and has given chemical report Ex.P.9. P.W.16, Sub Inspector of Police, Nagapattinam Town Police Station, on receipt of memo from the Hospital, has obtained statement from the deceased and registered a case in Crime No.135 of 2009 for the offence under Section 307 of IPC and prepared FIR Ex.P14. P.W.17 is the Inspector of Police, Nagapattinam Town Police Station. According to him, he commenced the investigation, arrested the accused, recovered material objects and obtained statements from the witnesses. P.W.18, another Inspector of Police, continued the investigation. P.W.19 is the Doctor, working in the Government Hospital, who admitted the deceased in the Government Hospital, Nagapattinam and his evidence was that at the time of admission, the deceased was not able to answer and her husband told that she poured kerosene herself and set fire to her body. P.W.20, Inspector of Police, completed the investigation and filed the final report, on 30.08.2009, before the Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

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

7. It is a case based on circumstantial evidence. The occurrence said to have taken place on 11.03.2009 at about 8.30 p.m. It is stated that at that time, P.W.1, mother of the

deceased, went to the house of the deceased, she saw the deceased coming out of her house with fire flames on her body and the accused was also present, pretending to douse the fire. Thereafter, she along with the accused admitted her in the Government Hospital, Nagapattinam. P.W.19, Doctor, who admitted the deceased in the Hospital, issued an Accident Register, Ex.P14. In his evidence, P.W.19 has stated that at the time of admission, when she questioned the deceased, she was not able to answer and the accused also accompanied the deceased, stated that the deceased poured kerosene herself and set on fire, on her own. In the Accident Register Ex.P.14, it is only mentioned that the deceased allegedly set fire to herself around 9.00 p.m., in her residence at Akkaraipettai and it is not mentioned that the said statement was given by the accused. Apart from that, during the investigation, the deceased is said to have given a statement that the accused poured kerosene on her and set her on fire. Hence, the evidence of Doctor, P.W.19 and also Ex.P.14, Accident Register is only an improvement. Subsequently, on 12.03.2009, at about 9.30 a.m., P.W.16, Sub Inspector of Police has reached the Government Hospital and recorded the statement of the deceased and registered a case. But, the FIR reached the concerned Judicial Magistrate Court only on the next day i.e., on 13.03.2009 at about 10.30 a.m., even though the deceased was admitted in the Hospital on 11.03.2009 at 9.40 p.m. Further, even though intimation was given to the police on the same day, P.W.16 has obtained statement from the deceased only on 12.03.2009 at about 9.30 a.m., and registered the FIR at about 10.00 a.m. and the same has been sent to the Judicial Magistrate Court on the next day i.e., on 13.03.2009 at 10.30 a.m. Hence, the prosecution has not properly explained the delay in registering the complaint, and also delay in sending the FIR to the Judicial Magistrate Court. In the meantime, on 11.03.2009, at about 10.30 p.m. learned Judicial Magistrate No.I, Nagapattinam has recorded the dying declaration of the deceased, where, the deceased had stated that the accused poured kerosene on her and set her on fire. It is seen from the evidence of P.W.1 that at the time of occurrence, the accused was present in the scene of occurrence and he was pretending to douse the fire and he also accompanied the deceased and admitted her in the Hospital. At the time of admitting the deceased in the Hospital, as per Ex.P14 Accident Register, she was conscious and oriented. The deceased has given statement that she poured kerosene on herself and set her on fire. Subsequently, on the next day, she has changed the version and blamed the accused. Hence, it is a discrepancy in the dying declaration of the deceased. The earliest version of the deceased was self-immolation. Except the dying declaration, there is no other evidence available to connect the accused with the occurrence. Hence, in view of the discrepancy in the dying declaration, it

is not safe to rely upon the dying declaration and convict the accused, as the dying declaration of the deceased does not inspire the confidence of this Court. In the above circumstances, we are of the considered view that the prosecution has failed to prove its case beyond reasonable doubt. Hence, the appellant/accused is entitled for acquittal.

8. In fine, this Criminal Appeal is allowed. The conviction and sentence passed by the learned District and Sessions Judge, Nagapattinam, in Sessions Case No.146 of 2010 is set aside and the appellant/accused is acquitted of the charge levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amount paid by him is ordered to be refunded, forthwith. It is stated that the appellant is in jail. He is directed to be released forthwith, only his presence is required in connection with any other case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1) The District and Sessions Judge,
Nagapattinam.
- 2) -do Thro The Principal Sessions Judge,
Nagapattinam
- 3) The Judicial Magistrate NO.I, Nagapattinam
- 4) -do- Thro The Chief Judicial Magistrate
Nagapattinam.
- 5) The Superintendent, Central Prison
Cuddalore.
- 6) The District Collector,
Nagapattinam.
- 7) The Director General of Police,
Mylapore, Chennai 4.
- 8) The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam.

- 9) The Public Prosecutor,
High Court, Madras.
10) The Section Officer, Criminal Section
High Court, Madras 104.

+1cc to Mr.L.Baskaran, Advocate, S.R.No.34508

MSM(CO)
BB(30/12/2016)

CrI.A.No.236 of 2015



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