

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

Cr1.A.No.241 of 2015

Miniappan @ Muniappan

Appellant

vs.

The State, by
The Inspector of Police,
Gobichettipalayam Police Station,
Erode District.
(Crime No.34 of 2013)

Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 03.03.2015 passed by the learned District
and Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila
Court), Erode in S.C.No.27 of 2014.

For Appellant : Mr.V.Selvaraj for
Mr.C.S.Saravanan

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.27 of 2014, on the file of the learned District and Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode. He stood charged for an offence under Section 302 of IPC. The Trial Court, by judgement dated 03.03.2015, convicted the appellant/accused for the offence under Section 302 IPC., and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three 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. On 17.03.2012, marriage took place between them. The accused is a drunkard and he used to quarrel with the deceased, frequently. Hence, the deceased gave a complaint before All Women Police Station and during enquiry, the accused gave an assurance that he would not harass the deceased and took her to his house. On 13.01.2013, both the accused and the deceased went to the parental house of the deceased, for a festival and on 14.01.2013, there was a quarrel between them. P.W.1, father of the deceased and others compromised them and sent the deceased to matrimonial home. On 18.01.2013, there was a quarrel between them, during which, the accused poured kerosene on the deceased and set fire on her. P.W.3, house owner, after hearing the cry of the deceased, went to the house and when the accused open the door, she found the deceased with fire. Immediately, they called Fire Service and the accused also sustained burn injuries. Fire Service people arrived and rescued the deceased and admitted her in the Government Hospital, Gobichettipalayam, at about 10.30 p.m.

(ii) P.W.8, Assistant Civil Surgeon, working in the Government Hospital, Gobichettipalayam, admitted the deceased and the accused in the Hospital and issued Accident Registers Ex.P6 for the deceased and Ex.P7 for the accused and sent a memo, Ex.P8 to the learned Judicial Magistrate No.II, Gobichettipalayam, for recording dying declaration and sent a memo, Ex.P10 to the respondent police. He found that the accused got 36% burn injuries.

(iii) P.W.14, Sub Inspector of Police, working in the respondent police, on receipt of Ex.P10 memo from the Government Hospital, proceeded to the Government Hospital at about 10.45 and recorded the statement of the deceased, Ex.P18 and based on the said statement, he registered a case in Crime No.34 of 2013 for the offence under Section 307 IPC and prepared Ex.P19, First Information Report and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.15, learned Judicial Magistrate No.II, Gobichettipalayam, on receipt of Ex.P8 memo from the Government Hospital, proceeded to the Government Hospital and at about 11.30 p.m., after confirming that the deceased was in good conscious and in a fit state of mind to give dying declaration and obtaining a certificate from the duty Doctor to that effect, recorded the dying declaration, which is marked as Ex.P20. In the meantime, P.W.1, father of the deceased and P.W.2, sister of the deceased, reached the hospital.

(iv) P.W.16, Inspector of Police, working in Nambiyur Police Station, holding additional charge of Gobichettipalayam Police Station, on receipt of FIR, commenced the investigation, proceeded to the scene of occurrence at about 1.15 pm on 19.01.2013 and prepared an Observation Mahazar, Ex.P16, Rough Sketch, Ex.P22 and seized a 5 litre plastic can, M.O.1, Kerosene M.O.2, a Match box, M.O.3 and a half burnt lungi M.O.4 under Form-95 in the presence of witnesses and recorded their statements and handed over the case records to P.W.17, Inspector of Police, Gobichettipalayam Police Station.

(v) P.W.17, Inspector of Police, Gobichettipalayam Police Station, on receipt of the case records, continued the investigation. On 21.01.2013, the deceased succumbed to the injuries and hence P.W.17 altered the FIR into under Section 302 of IPC, prepared altered report, Ex.P23 and sent the same to the Judicial Magistrate Court. On 25.01.2013 at about 7.00 a.m., he conducted inquest over the dead body, in the presence of panchayatars, in the Hospital and prepared an Inquest Report, Ex.P24 and recorded the statement of P.W.7 and other witnesses.

(vi) P.W.9, Assistant Civil Surgeon, working in the Government Hospital, Gobichettipalayam, conducted postmortem on the dead body of the deceased and found the following injuries.:-

Postmortem rigidity present in her hand and legs all the area of her body was burnt except some area, front side of both legs, back side of both legs, back side of both thighs, both feet were not burnt. All the internal organs were congested. The stomach contained 50 ml of brown coloured fluid.

He opined that the deceased would appear to have died due to burns and septicaemia. He issued Postmortem Certificate Ex.15.

(vii) On 06.03.2013, the accused surrendered before the respondent police. P.W.17 arrested the accused and on such arrest, the accused gave a confession, thereafter, P.W.17 sent him for judicial custody. P.W.17 examined the Doctor who conducted postmortem and other witnesses and recorded their statements. After completion of investigation, P.W.17 laid charge sheet against the accused.

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 17 witnesses were examined, 24 documents were exhibited and 4 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the father of the deceased. He has spoken about the quarrel between the deceased and the accused and after the occurrence he met the deceased in the Government Hospital, Gobichettipalayam, where, the deceased told him that the accused poured kerosene on her and set fire on her. P.W.2 is the sister of the deceased. She has spoken about the earlier complaint given by her father before the All Women Police Station and also about the quarrel between the deceased and the accused. According to her, after the occurrence, she saw the deceased in the Government Hospital, Gobichettipalayam, where, the deceased told her that the accused poured kerosene on her and set fire. P.W.3, owner of the house, where both the accused and deceased were residing and according to him on the date of occurrence on hearing the cry of the

deceased, went to their house and when open the door, she saw the deceased with fire and immediately she poured water on the deceased and called fire service personnel and the accused was found with burn injuries. P.W.4, co-tenant, reached the scene of occurrence after hearing the cry and he poured water on the deceased and doused the fire. P.W.5 is a close relative of the deceased. According to her, after the occurrence, she met the deceased in the hospital, where, the deceased told her that only the accused poured kerosene on her and set fire on her. P.W.6, Sub Inspector of Police, working in the All Women Police Station has spoken about the earlier complaint given by the deceased against the accused and according to her there was a settlement between them, where, the accused assured that he would not harass the deceased. P.W.7, Station Fire Officer, Anthiyur Fire Service Station has deposed that he took the deceased and the accused to the Government Hospital in the fire service van and at that time, the deceased cried and said that her husband poured kerosene and set fire on her. P.W.8, Assistant Civil Surgeon, working in the Government Hospital, Gobichettipalayam has deposed that he admitted both the accused and the deceased in the Hospital and issued Accident Register, Ex.P6 for the deceased and Ex.P7, for the accused and sent memos to the Judicial Magistrate Court for recording dying declaration as well as to the respondent police. P.W.9 is the Doctor working in the Government Hospital, Gobichettipalayam, conducted posrtmortem on the dead body of the deceased and issued Postmortem Certificate Ex.P15. P.W.10, a resident of Palapalayam is a witness to the Observation Mahazar and recovery of material objects. P.Ws.11 and 12 are the residents of Palapalayam, known to the accused and the deceased. They have spoken about the statement given by the accused to the respondent police in the Police Station. P.W.13, Head Constable has stated that he identified the dead body for postmortem. P.W.14, Sub Inspector of Police, working in the respondent police has deposed that on receipt of the complaint, he registered a case in Crime No.34 of 2013 for the offence under Section 307 of IPC and prepared FIR Ex.P19 and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.15, learned Judicial Magistrate No.II, Gobichettipalayam has stated that he recorded the dying declaration of the deceased. P.W.16, Inspector of Police has stated that on receipt of the FIR, he commenced the investigation, prepared Observation Mahazar and Rough Sketch and examined the witnesses and recorded their statements and handed over the case records to P.W.17, Inspector of Police, for further investigation. P.W.17, Inspector of Police has deposed that on receipt of the case records, he continued the investigation, arrested the accused recorded his statement, examined the Doctor who conducted autopsy and other witnesses and recorded their statements and after completion of investigation, filed charge sheet.

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 and sentenced the accused for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

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

8. It is a case of circumstantial evidence. The Prosecution, in order to prove the charge against the accused, has mainly relied upon the dying declaration of the deceased. P.W.1, the father of the deceased, has spoken about the earlier quarrel between the accused and the deceased and the motive of the occurrence. According to him, on 14.01.2013, 3 days prior to the occurrence, there was a quarrel between the accused and the deceased in their house and he compromised them. P.W.3 is the house owner, where, the accused and the deceased were residing at the time of occurrence. According to her, after the occurrence, when she went to the house of the deceased, she found the deceased with fire and she poured water on her and doused the fire and at that time, the deceased told her that the accused only poured kerosene on her and set fire. P.W.4 is a neighbour, according to her, after the occurrence she went to the house of the deceased, where, the deceased informed her that only the accused poured kerosene on her and set fire. P.W.7 is the Station Officer, Tamil Nadu Fire Service, Gobichettipalayam Fire Service Station. It is his evidence that he took the accused and the deceased to the Government hospital and on the way to hospital, the deceased told him that only the accused poured kerosene on her and set fire. P.W.14, Sub Inspector of Police, in his evidence, he stated that he recorded the statement of the deceased. It is the evidence of P.W.15, learned Judicial Magistrate No.II, Gobichettipalayam, that he recorded the dying declaration, after following the established procedure. A perusal of his evidence shows that before recording the dying declaration, the learned Judicial Magistrate was fully satisfied that the deceased was in good conscious and in a fit state of mind to give dying declaration. Apart from that, he has also obtained a certificate from the duty Doctor. In her dying declaration, the deceased has stated that while she was watching a T.V. programme, the accused came in a drunken mood and there was a quarrel between them and during the quarrel the accused poured kerosene on her and set fire and he also suffered injuries and the accused only poured water on her to douse the fire. In all the above dying declarations, the deceased has consistently stated that the accused poured kerosene on her and set fire. Hence, we find no infirmity or any contradictions in those dying declarations. Further, the Judicial dying declaration given before the learned Judicial Magistrate has also been recorded properly. Hence, we are fully satisfied that all the dying declarations were genuine, voluntary, consistent and credible.

9. The learned counsel appearing for the appellant would submit that the accused also sustained burn injuries in the same occurrence. It is the submission of the learned counsel for the appellant that while the deceased was attempting to commit suicide, the accused tried to extinguish the fire and in that processes, he sustained injuries. But, we do not find any force in the argument of the learned counsel appearing for the appellant. It is the consistent statement of the deceased that at the time of occurrence both the accused and deceased alone were in the house and it is only the accused poured kerosene on her and set fire and during that course, the accused also suffered injuries and then only he poured water on her and doused the fire. Therefore, the prosecution has clearly explained the injuries sustained by the accused. From the above proved circumstances, we are of the considered opinion that the prosecution has clearly established that it was this accused who had caused the death of the deceased by pouring kerosene on her and setting fire on her.

10. Now, the next question is what was the offence that the accused has committed by the said Act?. From the dying declaration of the deceased, it could be seen that there were frequent quarrels between the accused and the deceased and on the date of occurrence, while the deceased was watching T.V., the accused came in a drunken mood and questioned the same, due to which, there was a quarrel between them and during the quarrel, the accused poured kerosene on her and set fire. Apart from that, in the same occurrence, the accused also had suffered extensive burn injuries and he only poured water on the deceased to douse the fire. Hence, from the above said evidence, it has been clearly proved that there was a quarrel between the accused and the deceased before the occurrence and during the quarrel, out of sudden provocation, the accused had poured kerosene on the deceased and set fire on her. Thus, the offence committed by the accused squarely falls within the first exception to Section 300 IPC. Though, he would not have any intention to cause the death of the deceased, certainly he had the intention to cause such injury which would be sufficient in the ordinary course of nature to cause the death of the deceased. Hence, the act of the accused squarely fall within the 3rd limb of Section 300 IPC and therefore he is liable to be punished under Section 304(i) IPC.

11. In respect of the quantum of punishment is concerned, it is not a premeditated murder. On the date occurrence, due to quarrel, the occurrence had taken place. The accused has no bad antecedence and he is also a poor man. Having regard to the same, we are of the view that sentencing the accused to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of imprisonment already undergone by the appellant/accused shall be given set off, as required under Section 428 Cr.P.C.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District and Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court), Erode.
2. The Principal Sessions Judge,
Erode.
3. The Judicial Magistrate,
No.1, Gobichettipalayam.
4. The Chief Judicial Magistrate,
Erode.
- 5 The Superintendent
Central Prison, Coimbatore.
6. The Inspector of Police,
Gobichettipalayam Police Station, Gobichettipalayam.
7. The District Collector
Erode, Erode District.
8. The Director General of Police,
Mylapore, Chennai-4.
9. The Public Prosecutor, High Court,
Madras.

+1 CC to Mr.C.S.Saravanan, Advocate Sr.No.34661

Cr1.A.No.241 of 2015

UG (CO)

KP(27.12.2016)

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