

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2016

CORAM

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

Crl.A.No.301 of 2015

R.Kanagaraj

... Appellant/Accused

Vs

State represented by
Inspector of Police
Annathanapatty Police Station
Salem District.
(Crime No.1413 of 2010)

... Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, (Fast Track Court No.1), Salem, in S.C.No.116 of 2011 on 31.01.2012.

For Appellant : Mr.G.Swamy Subramaniam
Legal - aid - counsel

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

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.116 of 2011 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.1), Salem, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial Court found him guilty of the above said charge and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment. Challenging the above conviction and sentence, the present Appeal has been filed.

2. The prosecution case, in brief, is as follows:-

(i) The deceased in this case one Rani is the wife of the appellant. Suspecting the fidelity of the deceased, the accused

frequently quarrelled with the deceased. On 05.12.2010 at about 5.40 p.m, the appellant returned home, after his work, and questioned the deceased whether she had prepared lunch and quarrelled with her and thereafter, went inside the house and took kerosene and poured the same on the deceased and set fire on her.

(ii) PW.1 - mother of the deceased and PW.2 - brother of the deceased were present in the house when the occurrence took place and immediately, they doused the fire and called Ambulance and took the deceased to Government Mohan Kumaramangalam Medical College Hospital, Salem.

(iii) PW.9 - Senior Civil Surgeon working in the Casualty Ward admitted the deceased in the hospital and at the time of admission, the deceased told him that the appellant poured kerosene and set fire on her. PW.9 found 90% burn injuries on the deceased and issued Accident Register (Ex.P5).

(iv) PW.8, learned Judicial Magistrate No.IV, Salem, on receipt of a memo from the Government Hospital, proceeded to the hospital. PW.8, on being satisfied that the deceased was conscious and in a fit state of mind and also after obtaining certificate to that effect from the duty Doctor, recorded dying declaration of the deceased. PW.8, after recording the dying declaration of the deceased, also obtained another certificate from the Doctor that the deceased was conscious and in a fit state of mind till recording of the dying declaration.

(v) PW.11, Sub-Inspector of Police, then working in the respondent police station, on receipt of a memo from the hospital, proceeded to the hospital and recorded the statement of the deceased and based on the above statement, registered a case in Crime No.1413 of 2010 for the offence under Section 307 IPC and sent the First Information Report (Ex.P8) and the complaint/statement (Ex.P7) to the Judicial Magistrate No.IV, Salem, and copies to the higher officials.

(vi) PW.12 - Inspector of Police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar and also drew a rough sketch (Ex.P9) and recovered 5 litre plastic can (M.O.1), a match box with some match sticks (M.O.2) and five burnt match sticks (M.O.3), in the presence of witnesses and then recorded the statements of witnesses. On 06.12.2010 at about 1.00 p.m, PW.12 arrested the accused and on such arrest, the accused voluntarily gave a confession and after recording the confession, PW.12 sent the accused to judicial custody. Subsequently, on 07.12.2010 at about 9.00 a.m, the deceased succumbed to injuries, hence, PW.12 altered the charge under Section 302 IPC and sent the altered

First Information Report to the higher officials. Thereafter, PW.12 conducted inquest on the dead body in the presence of panchayatdars at 12.00 noon and prepared inquest report Ex.P11 and sent a requisition for conducting postmortem on the dead body.

(vii) PW.10 - Assistant Professor, working in Medico-Legal Department in Government Mohan Kumaramangalam Medical College Hospital, conducted postmortem on the dead body and found the following injuries:-

"Ante-mortem Injuries:

Dermo - epidermal burns over front sides and back of neck, chin, front and back of chest, upper abdomen, both upper limbs including hands, front and back of both thigh, front and back of both legs. Surrounded by area of hyperemia.

Auxillary hair singed.

Surgical cut down seen over inner aspect of left ankle (Ante - mortem)

No other ante-mortem injuries seen anywhere on the body.

OTHER FINDINGS:

O/d. Head : Scalp - intact. Dural membranes and cranial vault - intact. Brain - oedematous C/s. Pale. Base of skull - intact.

O/d. Neck : All neck structures - Normal. Hyoid Bone - intact.

O/d. Thorax : No rib fracture. Lungs C/s. Congested. Heart : Normal in size. Chambers contained minimal fluid blood. Valves and Myocardium - Normal. Great Vessels and Coronaries - patent.

O/d Abdomen : Stomach - contains 75 ml of dark brownish yellow colour fluid with no specific smell. Mucosa c/s. Congested. Liver, Spleen and Kidneys - C/s. Congested. Capsule intact. Bladder - empty. Genitalia - No injuries made out. Uterus - normal in size. Cavity - contains menstruated blood pelvis and spinal column - intact."

Ex.P6 is the postmortem report. PW.10 Doctor was of the opinion that the death was due to the effect of burn injuries.

(viii) After recording the statements of postmortem Doctor and other witnesses and on completion of investigation, PW.12 filed charge sheet under Section 302 IPC against the appellant.

3. Based on the above materials, the trial Court framed a lone charge against the appellant under Section 302 IPC. The accused denied the same. In order to prove the charges, the prosecution examined 12 witnesses and marked 13 documents and 3 material objects.

4. Out of the witnesses examined, PW.1 is the mother of the deceased and she is an eyewitness to the occurrence. According to her, on the date of occurrence, she, along with P.Ws.2 and 3, was standing near the house of the deceased and at that time, the accused came in a cycle and questioned the deceased whether she prepared lunch and quarrelled with her and thereafter, he went inside the house, took kerosene can and poured kerosene on the deceased and set fire on her. PW.2 is the brother of the deceased. He is also an eyewitness to the occurrence. According to PW.2, he, along with P.Ws.1 and 3, was standing near the house of the deceased and at that time, the accused came there in a cycle and scolded the deceased in filthy language and then went inside the house and poured kerosene on the deceased and set fire on her and went away; and he, along with other persons, took the deceased to the hospital. PW.3 was a neighbour. According to him, he saw the deceased crying with burn injuries and he, along with others, took the deceased to the hospital. PW.4 was also a neighbour, who called ambulance and sent the deceased to the hospital. PW.5 - Village Administrative Officer, is a witness to the Observation Mahazar and also recovery of material objects. PW.6 is a witness to the arrest of the accused and recording of the confession given by him. PW.7 - Head Constable has stated that he identified the body for postmortem and after postmortem, he handed over the body to the relatives. PW.8 - Judicial Magistrate No.IV, Salem, has stated that he recorded the dying declaration of the deceased. PW.9 - Doctor has deposed that he admitted the deceased in the hospital and gave Accident Register (Ex.P5). PW.10 is the Doctor who conducted postmortem on the dead body and gave postmortem report (Ex.P6). PW.11, Sub-Inspector of Police has stated that he recorded the statement of the deceased in the hospital and registered First Information Report (Ex.P8). PW.12 - Inspector of Police has deposed that he conducted investigation, recorded statements of witnesses, arrested the accused 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. The appellant/accused examined 3 witnesses as DW.1 to DW.3, but did not mark any document.

6. DW.1 is the sister of the appellant. According to her, there was a quarrel between the accused and the deceased in

respect of a cock, when the accused wanted the deceased to cook it, the deceased refused to do so; and a day prior to the occurrence, the deceased attempted to commit suicide. DW.2 is the daughter of accused and the deceased. According to DW.2, there was a quarrel between the accused and the deceased regarding a cock; the accused asked the deceased to cook it, but she refused. DW.3 is the cousin of accused. He has also spoken about the quarrel between the accused and the deceased.

7. Considering the above materials, the trial Court convicted the accused and sentenced him as mentioned in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the appellant before this Court.

8. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

9. P.Ws.1 and 2 are eyewitnesses to the occurrence. According to PW.1 - mother of the deceased, she, along with P.Ws.2 and 3, was standing in the house of the deceased; at that time, the accused came there in a cycle and quarrelled with the deceased; thereafter, he went inside the house and took kerosene can and poured kerosene on the deceased and set fire on her. But in the cross examination, PW.1 has stated that at the time of occurrence, they were standing outside the house and she did not know what had happened inside the house and the deceased alone was inside the house. PW.2 is the brother of the deceased. According to him, he saw the accused coming in a cycle, going inside the house, quarrelling with the deceased and pouring kerosene and setting fire on the deceased. But in the cross-examination, PW.2 had admitted that he was standing outside the house and the occurrence took place inside the house. As per the testimonies of P.Ws.1 and 2, the occurrence took place inside the house and they were standing outside and they did not know what had happened inside the house. Hence, P.Ws.1 and 2 ought not to have seen the occurrence and therefore, P.Ws.1 and 2 cannot be considered as eyewitness to the occurrence. However, as the occurrence had taken place inside the house, the burden is on the accused to explain as to what had happened inside the house, which led to the occurrence.

10. The next circumstance is the dying declarations given by the deceased. There are three dying declarations. At the time of admission in the hospital, the deceased has told PW.9 - Doctor working in Government Mohan Kumaramangalam Hospital, Salem, that the accused poured kerosene and set fire on her. Subsequently, PW.11 - Sub Inspector of Police, recorded the statement of the deceased in the hospital, wherein also the

deceased has implicated the accused only stating that the accused poured kerosene and set fire on her. PW.8 - learned Judicial Magistrate No.IV, Salem, after being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration and after obtaining necessary certificate from the Doctor to that effect and also after observing all the formalities, recorded the statement of the deceased. In the said judicial dying declaration given before the learned Magistrate also, the deceased has categorically stated that it was only the accused has poured kerosene and set fire on her. In all the above three dying declarations, the deceased has consistently stated that only this accused poured kerosene and set fire on her. Hence, we have no reason to disbelieve the statement of the deceased in the dying declarations.

11. The accused examined three witnesses D.Ws.1 to 3 to discharge his burden. So far as the defence witnesses are concerned, DW.1 is the sister of the accused and she has only spoken about the quarrel between the accused and the deceased and according to her, the deceased told her that she only poured kerosene and set fire on her. DW.1 is only a hearsay witness and hence, it cannot be believed. DW.2 is the daughter of accused and deceased. Since being the interested witness, it is highly unsafe to rely upon the testimony of DW.2. DW.3 is also a hearsay witness and according to him, the deceased told him that it is self immolation. Therefore, the defence witnesses in no way helpful to the case of the accused.

12. Considering all the above materials, we are of the considered view that the prosecution has clearly established that only this accused had poured kerosene on the deceased and set fire on her.

13. Now the question is as to what was the offence that the accused had committed by the said act.

14. From the evidence of P.Ws.1 and 2 and also from the dying declarations, it is clear that before the occurrence, there was a quarrel between the accused and the deceased when the accused questioned the deceased as to why she has not prepared lunch and at the time of quarrel, being provoked by the words used by the deceased, the accused lost his mental balance and poured kerosene and set fire on the deceased. It is not a premeditated murder. Even though the accused had no intention to cause death of the deceased, definitely he had an intention to cause such bodily injury which was sufficient in the ordinary course of nature to cause death. Hence, this act of the accused would fall under the third limb of Section 300 IPC and first exception to Section 300 IPC. Hence, the act of the appellant/accused falls under Section 304 (1) IPC.

15. Turning to the quantum of sentence, the accused is a poor man and he has no bad antecedents and the occurrence was not premeditated and it was only due to sudden provocation and in a quarrel between the husband and wife, he lost his mental balance and poured kerosene on the deceased and set fire on her. Hence considering the mitigating and aggravating circumstances, sentencing the accused to undergo eight years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo four weeks rigorous imprisonment would meet the ends of justice.

16. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused on 31.01.2012 in S.C.No.116 of 2011 by the learned Additional District and Sessions Judge, (Fast Track Court No.1), Salem, under Section 302 IPC are set aside and instead, the appellant/accused is convicted under Section 304 (1) IPC and sentenced to undergo eight years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo four weeks rigorous imprisonment. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C.

17. While parting with the case, we appreciate the services rendered by Mr.G.Swamy Subramaniam, the learned Counsel, who appeared on behalf of the appellant/accused as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge
(Fast Track Court No.1),
Salem.

2.The Chief Judicial Magistrate,
Salem.

3.The Judicial Magistrate No.4,
Salem.

4.The District Collector,
Salem.

5.The Member Secretary,
Tamilnadu State Legal Services Authority,
North Fort Road, High Court, Chennai.

6.The Director General of Police,
Mylapore, Chennai.

7.The Inspector of Police
Annathanapatty Police Station
Salem.

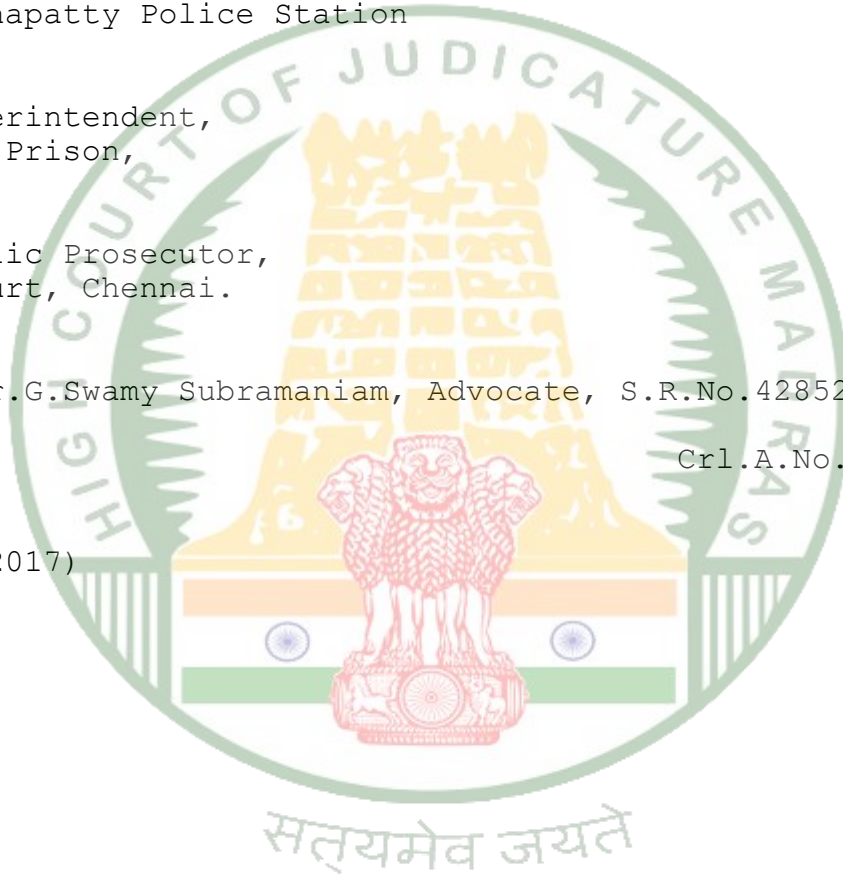
8.The Superintendent,
Central Prison,
Salem.

9.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.G.Swamy Subramaniam, Advocate, S.R.No.42852

Crl.A.No.301 of 2015

SR(CO)
CA(02/03/2017)



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