

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 30.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.513 of 2015

Sadiq Basha ... Appellant

vs.

The State, by
The Inspector of Police,
C-3, Manimangalam Police Station,
Kancheepuram District.
(Crime No.620 of 2008) ... Respondent

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 24.06.2011 passed by the
learned Additional District and Sessions Judge, (Fast Track
Court No.I), Chengalpattu, in S.C.No.240 of 2009.

For Appellant : Mr.K.Shanker

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.240 of 2009, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.I), Chengalpattu. He stood charged for an offence under Section 302 IPC. The Trial Court, by judgement dated 24.06.2011, found him guilty under Section 302 IPC, convicted him thereunder and sentenced him to undergo life imprisonment and a fine of Rs.1,000/- in default to undergo rigorous

imprisonment for six months. 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. Marriage between them took place on 05.12.2006 and they are having 10 months male child. Both of them were residing at MGR Nagar, Manimangalam Village. The accused, suspecting the fidelity of the deceased, quarrelled with her. On 25.12.2008, the deceased asked the accused to construct a bathroom in the house, due to which, there was a quarrel between them. At that time, the accused poured kerosene on the deceased and set fire on her. Immediately, the deceased was taken to Kilpauk Medical College Hospital, Chennai. P.W.13, Doctor, working in Kilpauk Medical College Hospital, Chennai, admitted the deceased in the casualty ward and at the time of admission, the deceased informed him that her husband poured kerosene and set fire on her. P.W.13 issued Accident Register, Ex.P17, and sent a memo to the respondent police.

(ii) P.W.14, Sub Inspector of Police, working in the respondent police station, on 26.12.2008, on receipt of the memo from the hospital, proceeded to the Hospital and recorded the statement of the deceased at about 11.00 a.m., and based on the said statement, he registered a case in Crime No.620 of 2008 for the offence under Section 307 IPC and prepared FIR, Ex.P19 and sent the same to the Judicial Magistrate Court and copies thereof to higher police officials.

(iii) P.W.9, the learned XII Metropolitan Magistrate, Egmore, Chennai, on receipt of a memo from the Hospital, proceeded to the Hospital and after confirming that the deceased was in good conscious and in a fit state of mind to give dying declaration and obtaining certificate from the duty Doctor, recorded the dying declaration, which is marked as Ex.P10.

(iv) P.W.15, in-charge Inspector of Police, working in the respondent police station, on receipt of the FIR, commenced the investigation. On 27.12.2008, at about 7.00 a.m., he visited the scene of occurrence and prepared an Observation Mahazar, Ex.P20 and a Rough Sketch, Ex.P21. He seized half burnt Nylon saree, M.O.1, Skirt M.O.2 and another half burnt Nylon saree, M.O.3 under Ex.P22, seizure mahazar. He also examined some witnesses and recorded their statements. On the same day, at about 1.00 p.m., he arrested the accused and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, Ex.P24, P.W.15 recovered a 500 ml Plastic can, M.O.4 and a Match Box, M.O.5,

under Ex.P25, seizure mahazar. Thereafter, he sent the accused to the judicial custody. In the meantime, the deceased succumbed to injury. Hence, P.W.15 altered the FIR into Section 302 IPC and prepared altered report, Ex.P19. He conducted inquest over the dead body, in the presence of panchayatars, in the hospital and prepared, inquest report Ex.P28. He sent the dead body for postmortem.

(v) P.W.11, Doctor, working in Kilpauk Medical College Hospital, Chennai, conducted postmortem on the body of the deceased and found the following injuries:-

Deep dermal burns involving part of head, face, chest and part of abdomen, both arm front and back both legs, part of both thigh, yellowish crust seen over burnt area. Burns are antemortem in nature. Total burns 50%. Heart contains clot in both R/L ventricle. Lungs normal in size c/s congested. Trachea empty. Hyoid bone intact. Stomach empty c/s congested. Liver, spleen, kidneys normal c/s congested. Bladder empty. Uterus normal in size c/s empty. Pelvis, Scalp, bones, membranes and spinal column are intact. Brain normal.

He opined that the deceased would have died of complication of burn injuries.

(vi) P.W.15, continued the investigation, examined witnesses and recorded their statements. He handed over the case records to P.W.16, regular Inspector of Police, working in the respondent Police Station for further investigation. P.W.16, Inspector of Police, examined the Doctor who conducted postmortem and recorded his statement. After completion of investigation, P.W.16 laid the charge sheet.

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 16 witnesses were examined and 28 documents were exhibited and 5 material objects were marked.

4. Out of the said witnesses examined, P.Ws.1 to 6 have turned hostile. P.W.7 is the husband of the sister of the deceased. He is a witness to Ex.P8 complaint and Ex.P1 is his signature in Ex.P8, complaint. P.W.8 Scientific Officer, Forensic Department, has deposed that he examined the organs and gave a report, Ex.P9. P.W.9 is the learned XII Metropolitan Magistrate, Egmore, Chennai and he has spoken

about the recording of the dying declaration of the deceased marked as Ex.P10. P.W.10 turned hostile. P.W.11, Doctor, working in Kilpauk Medical College Hospital, Chennai, has deposed that he conducted postmortem on the dead body of the deceased and issued Postmortem certificate, Ex.P13. P.W.12, Doctor, working in the Kilpauk Medical College Hospital, has deposed that he gave a certificate that the deceased was conscious and in a fit state of mind, while giving dying declaration. P.W.13 is the Doctor, who admitted the deceased in the hospital and gave Accident Report, Ex.P17. According to him, at the time of admitting the deceased, the deceased stated that only her husband poured kerosene and set fire on her. P.W.14, Sub Inspector of Police, has deposed that immediately after recording the statement of the deceased, he registered the case in Crime No.620 of 2008 and sent the FIR to the Judicial Magistrate Court and copies thereof to the higher police officials. P.W.15, Inspector of Police, working in the respondent police Station has stated that on receipt of the FIR, he commenced the investigation, arrested the accused, recovered the material objects, examined the witnesses and recorded their statements and thereafter handed over the case records to P.W.16 for further investigation. P.W.16, Inspector of Police, working in the respondent police, on receipt of the case records has stated that he continued the investigation, examined the Doctor who conducted postmortem and recorded his statement and after completion of investigation, he laid the 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 the accused for the offences, as stated in the first paragraph of this judgment. Challenging the above said conviction and sentence, the accused is before this Court.

7. We have heard Mr.K.Shanker, 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. All the material witnesses, namely, P.Ws.1 to 6 have turned hostile. The Prosecution mainly relied upon the dying declaration of the deceased to prove the guilt of the accused. There are three dying declarations in this case. At the time of admission in the hospital, the deceased has stated to the

Doctor that it was her husband, the accused, poured kerosene on her and set fire on her. Ex.P18 is the statement given by the deceased before P.W.14, the Sub Inspector of Police, in which she has stated that there used to be frequent quarrels between her and the accused and as such there was a quarrel on 26.12.2008, due to which, the accused poured kerosene and set fire on her. In the Judicial dying declaration also marked as Ex.P10, she has narrated the same. P.W.9, the learned XII Metropolitan Magistrate, Egmore, Chennai, has recorded the dying declaration, after following proper procedure. Before recording the dying declaration, the learned Metropolitan 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 she has also obtained certificate from the duty Doctor to that effect. In all these dying declarations, the deceased has consistently stated that the accused poured kerosene on her and set fire on her. Hence, we find no infirmity or any contradictions in those dying declarations. Further, the Judicial dying declaration given before the learned Judicial Magistrate has been recorded after following the procedure. It is settled principle of law that dying declaration can be the sole basis for convicting an accused, even without any corroboration, provided dying declaration should be genuine, voluntary, consistent and credible. In the above circumstances, we are fully satisfied that the dying declarations of the deceased were genuine, voluntary, consistent and credible and hence we find no reason to reject the multiple dying declarations. From the above proved circumstance, we are of the considered opinion that the prosecution has clearly establish that it was this accused who poured kerosene on his wife, the deceased and set fire on her and caused her death.

9. Now, the next question is "what was the offence that the accused has committed by the said Act?". We have already narrated that in all the dying declaration of the deceased, the deceased has consistently stated that there used to be frequent quarrel between her and the accused and on the date of occurrence, the deceased has asked the accused to construct a bathroom in the house, due to which, there was a quarrel between them, in which, being provoked and out of sudden provocation, the accused lost his mental balance and poured kerosene on the deceased and set fire on her. Hence, the act of the accused would squarely fall within the first exception to Section 300 IPC. Though, he would not have had any intention to cause the death of the deceased, certainly he had the intention to cause injury which was sufficient in the ordinary course of nature to cause the death of the deceased.

Hence, the act of the accused would squarely fall within the

3rd limb of Section 300 IPC and therefore he is liable to be punished under Section 304(i) of IPC.

10. In respect of the quantum of punishment is concerned, it is not a premeditated murder, the occurrence had taken place in a quarrel between the accused and the deceased and out of the sudden provocation, the accused poured kerosene on the deceased and set fire on her. Having regard to the same, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for seven 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.

11. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside and instead, he is convicted for the offence under Section 304 (i) IPC and sentenced to undergo rigorous imprisonment for 7 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.

Sd/
Assistant Registrar
/True copy/

Sub Assistant Registrar

To

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

2.The Inspector of Police,
C-3, Manimangalam Police Station,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

4 The Superintendent, Central Prison for conviicy
Puzhual Prison-I.

5 The Principal Distirct of Sessions Judge,
Chengalpattu,
Kancheepuram District.

6 The Judicial Magistral,
Tambaram, Chennai 45.

7 The Chief Judicial Magistrate,
Chengalpattu,
Kancheepuram District.

8 The District Collector,
Kancheepuram.

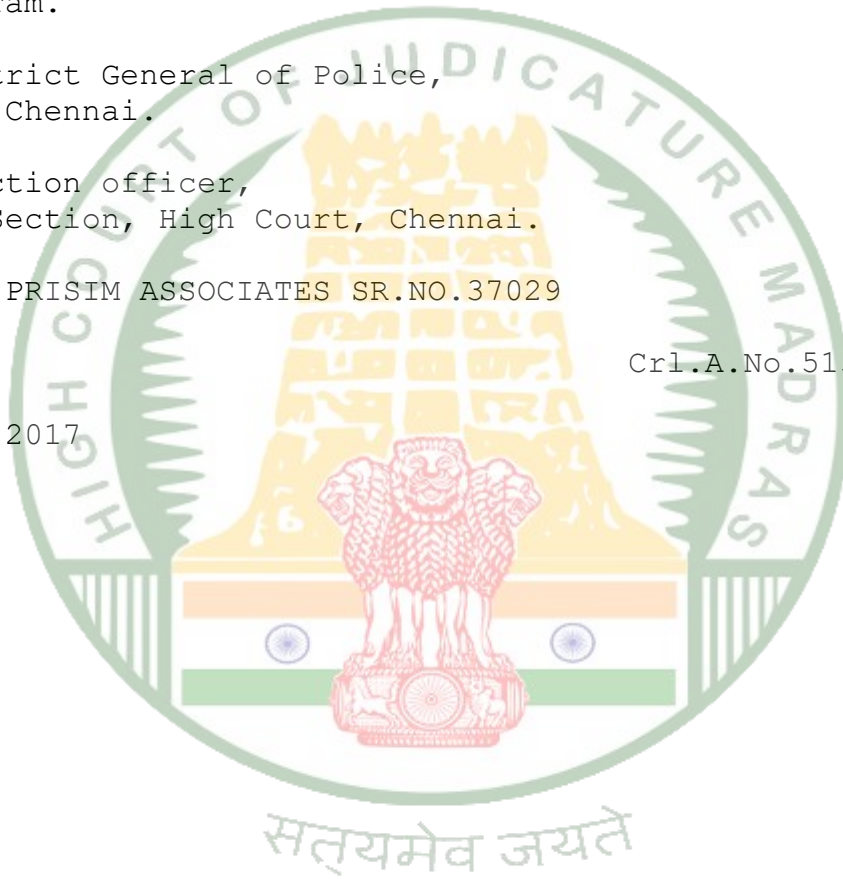
9 the District General of Police,
Mylapore, Chennai.

10 The section officer,
Criminal Section, High Court, Chennai.

+1cc o Mr.PRISIM ASSOCIATES SR.NO.37029

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MMP 02.01.2017



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