

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.616 of 2015

Maheswaran

..Appellant/Accused No.1

Vs

State represented by its
Inspector of Police
Kavundapadi Police Station
Erode District.

... Respondent/Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court (Mahalir Fast Track Court), Erode, in S.C.No.60 of 2014 on 27.04.2015.

For Appellant : Mr.P.Dinesh kumar

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.60 of 2014 on the file of the learned Sessions Judge, Mahila Court (Mahalir Fast Track Court), Erode, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial Court convicted him under Section 302 IPC, and sentenced him to undergo life imprisonment and also to pay a fine of Rs.10,000/-, in default to undergo one year simple imprisonment. Challenging the above conviction and sentence, the present Appeal has been filed.

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

(i) The deceased in this case is one Ammasaiammal. She is the second wife of the accused and there were frequent quarrels between the accused and the deceased. Earlier the deceased had given some jewels and money to the accused. Being fed up with

the accused, the deceased demanded the accused to return the money and jewels back. Hence, the accused decided to murder her. On 12.10.2013 at about 8 a.m, when the deceased was taking bath in the bath room, the accused poured kerosene on her and set fire on her.

(ii) PW.10 - neighbour of the deceased, on hearing the news, sent the deceased to Government Hospital, Gobichettipalayam in a 108 Ambulance.

(iii) At the time of treatment, the deceased told PW.8 - Doctor that in a fire accident, she suffered burn injuries. Since the deceased suffered severe burn injuries, PW.8 - Doctor after giving first aid to the deceased, referred her to Government Medical College Hospital, Coimbatore. PW.8 - Doctor also issued Accident Register - Ex.P2 and sent memo - Ex.P3 to the respondent police. Thereafter, the deceased was admitted in the Government Medical College Hospital, Coimbatore.

(iv) PW.12 - Assistant Professor in Government Medical College Hospital, Coimbatore, treated the deceased and after admission of the deceased, sent a memo to the learned Judicial Magistrate for recording dying declaration.

(v) PW.14 - Judicial Magistrate No.3, after receipt of the memo from Government Medical College Hospital, Coimbatore, reached the hospital at 1.55 p.m on 12.10.2013 and being satisfied that the deceased was conscious and in a fit state of mind to give dying declaration, recorded the dying declaration of the deceased. The Judicial Magistrate also obtained certificates (Ex.P11 and Ex.P12) from PW.12 Doctor, before and after recording the dying declaration of the deceased, to the effect that the deceased was in conscious and fit state of mind to give dying declaration - Ex.P14. In the dying declaration, the deceased told the learned Judicial Magistrate that the husband/accused poured kerosene and set fire on her. On 13.10.2013 at about 5.30 p.m, the deceased succumbed to injury.

(vi) After the death of the deceased, PW.1 - brother of the deceased rushed to the respondent police and lodged a complaint - Ex.P1 stating that her sister poured kerosene and set fire on her.

(vii) PW.12 - Special Sub Inspector of Police of the respondent police, based on the complaint given by PW.1, registered a case in Crime No.399 of 2013 (Ex.P13) under Section 174 of Cr.P.C and send the same to the learned Judicial Magistrate and higher officials.

(viii) PW.15 - Circle Inspector of Kavundapadi Police Station, on receipt of the First Information Report, commenced

investigation and proceeded to the scene of occurrence, preferred Observation Mahazar and also rough sketch - Ex.P16 and recovered plastic can and match box in the presence of witnesses. On 14.10.2013 at about 8 a.m, he went to the hospital and conducted inquest on the dead body in the presence of panchayatdars and recorded statement of witnesses. Inquest Report is Ex.P17. Based on the statement of witnesses, PW.15 came to know that it is only the accused, who committed the crime. Hence, he altered the case into that of 302 IPC and the altered First Information Report is Ex.P18, and sent the same to the learned Judicial Magistrate, Gobichettipalayam.

(ix) PW.9 - Doctor, Coimbatore Medical College Hospital, conducted autopsy on the dead body of the deceased on 14.10.2013 at about 12.20 p.m and found the following injuries.

" The following ante mortem injuries noted over the body:

- Infected dermo-epidermal burns involving face and all over the body, sparing head.
- Total singeing noted both axillary and pubic hairs.
- Partial singeing noted over marginal scalp hairs.
- Degloving of skin noted over both palms and soles.
- The base of burnt area of reddish in colour. Infected areas covered with yellow colour slough material.

OTHER FINDINGS:-

- Peritoneal and Pleural cavities : Empty.
- Larynx and Trachea : Cut section congested.
- Hyoid bone - Intact.
- Heart - All Chambers contains about few cc of fluid blood, Coronaries Patent.
- Stomach contained about 200 ml of yellow colour fluid, no specific smell, mucosa congested.
- Small intestine contained about 10 ml of bile stained fluid, no specific smell, mucosa congested.
- Liver, Lungs, Spleen, Kidneys and Brain : Cut section congested.
- Urinary bladder - Empty.
- Uterus - Normal in size cut section empty. "

Ex.P4 is the postmortem report and the Doctor was of the opinion that the deceased would appear to have died of burns and its complications.

(x) On 24.10.2013, the accused appeared before PW.11 - Village Administrative Officer, Andhiyur.A Village and gave extra judicial confession statement - Ex.P8. After recording the confession statement of the accused, the Village

Administrative Officer produced the accused before PW.15 with a special report - Ex.P9. PW.15 arrested the accused and on such arrest, the accused voluntarily gave confession and PW.15 recorded the same and then remanded the accused to judicial custody. PW.15, after completing investigation, filed the charge sheet.

3. Based on the above materials, the trial Court has framed charge under Section 302 IPC. The accused denied the same. In order to prove the same, the prosecution examined 15 witnesses and marked 18 documents and 2 material objects.

4. Out of the above witnesses, PW.1 is the brother of the deceased. He is the author of the First Information Report (Ex.P13). According to him, he has given some amount to the deceased and the deceased also complained that the accused was frequently demanding money. On 12.10.2013 at about 8 a.m, he received a phone call that the accused has set fire on the deceased. Then he rushed to the hospital, where the deceased said to have told him that the deceased set fire on her. After the death of the deceased, he filed a complaint to the respondent police. PW.2 is the father of the deceased. He also spoken about the quarrel between the accused and the deceased. PW.3 is the sister of the deceased. She also spoke about the quarrel between the deceased and the accused and she was in the hospital at the time of death of the deceased. PW.4 turned hostile. PW.5 also turned hostile. PW.6 is the uncle of the deceased. PW.7 is the daughter of the accused through his first wife. She also turned hostile. PW.8 is the Doctor at Government Hospital, Gobichettipalayam, who has given first aid to the deceased and has given Ex.P2 - Accident Register. At the time of admission, the deceased told PW.8 - Doctor that it is in the fire accident, she suffered burn injuries. PW.9 is the Doctor at Coimbatore Medical College Hospital and conducted autopsy on the dead body of the deceased. PW.10 is the neighbour, who sent the deceased in 108 Ambulance to the hospital. PW.11 is the Village Administrative Officer, before whom, the accused gave extra-judicial confession. PW.12 is the Doctor who treated the deceased and sent a memo to the learned Judicial Magistrate to record the dying declaration and also gave certificate that the deceased was in conscious and fit state of mind to give dying declaration. PW.13 is the special Sub-Inspector of Police who registered the First Information Report. PW.14 is the Judicial Magistrate, who recorded the dying declaration. PW.15 is the Inspector of Police, who conducted investigation and recovered material objects and arrested the accused and after recording the statement of witnesses, altered the First Information Report under Section 302 IPC, and after completion of investigation, filed 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. The accused did not examine any witnesses and marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced him as mentioned in paragraph-1 of the judgment. Challenging the same, the accused is before this Court with this appeal.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent police and perused the records carefully.

8. It is a case of circumstantial evidence. The prosecution mainly relies on the dying declaration of the deceased and also the extra-judicial confession given by the accused. So far as the dying declaration is concerned, there are two dying declarations. After the occurrence, the deceased was taken to the Government Hospital, Gobichettipalayam. As per the evidence of PW.8, only the accused brought the deceased to the hospital and while giving treatment, the deceased told him that in a fire accident in her house, she suffered burn injuries. PW.8 also issued Accident Register - Ex.P2 to that effect. Then she was referred to Government Medical College Hospital, Coimbatore, where she has given judicial dying declaration before the Judicial Magistrate. PW.14 - Judicial Magistrate recorded the dying declaration, wherein the deceased has simply stated that there was a quarrel between the accused and the deceased for the past one week and the accused asked her to leave the house and hence, the accused poured kerosene and set fire on her. Subsequently, she died on 13.10.2013 at about 5.30 p.m. After the death, PW.1 - brother of the deceased, who was stated to be in the hospital till the death of the deceased, had given a complaint (Ex.P1), wherein he has stated that he received information that the deceased poured kerosene and set fire on her and immediately he reached the hospital and he was with her. Subsequently, the deceased died on 13.10.2013 at about 5.30 p.m. The above complaint was given after the death of the deceased, wherein PW.1 did not implicate the deceased. Hence, a case was registered under Section 174 Cr.P.C., and during the investigation, based on the statement of witnesses, the crime was altered to Section 302 IPC.

9. We have carefully considered the dying declarations of the deceased and found they are inconsistent. At the earliest point of time, the deceased told the Doctor that she sustained injuries in an accidental fire and subsequently, she changed her version and gave judicial dying declaration implicating the accused. In view of the inconsistency in the dying declarations, the dying declarations are highly unreliable and

it is unsafe to convict the accused based on the inconsistent dying declarations.

10. The next circumstance is the extra-judicial confession given by the accused before the Village Administrative Officer - PW.11. The above confession is also unreliable because the Village Administrative Officer is a stranger and there was no reason for the accused to repose confidence and to give a confession before him. Apart from that, even though extra-judicial confession is admissible in evidence, it is a weak piece of evidence. In the absence of any corroboration, it is also not safe to convict the accused based on the uncorroborated extra-judicial confession.

11. Apart from that the another circumstance, which is against the prosecution, was after the death of the deceased, PW.1 - brother of the deceased has given the complaint before the respondent police on 13.10.2013 at about 7 p.m, wherein also he has not implicated the accused. Hence, earlier the crime was registered under Section 174 Cr.P.C. Apart from that, we have to consider the conduct of the accused also after the occurrence, it is only the accused had taken the deceased to the hospital and admitted her in the hospital, the above conduct is only consistent with his innocence.

12. It is settled principle of law that in the case of circumstantial evidence, the prosecution should prove all the circumstances beyond all reasonable doubts and the proved circumstances should form a chain unerringly pointing the guilt of the accused. Considering the above principle in mind, if we consider the instant case, we are of the opinion that the prosecution failed to establish the guilt of the accused. Hence, he is entitled for acquittal.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused by the trial court are set aside. The appellant/accused is acquitted and fine amount already paid, if any, shall be refunded to him. The bail bond shall stand terminated.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mra

To

1. The Sessions Judge,
Mahila Court (Mahalir Fast Track Court),
Erode.
 2. -do-through the Principal Sessions Judge, Erode District.
 - 3.The Judicial Magistrate No.II, Gobichettipalayam.
 - 4.-do-through the Chief Judicial Magistrate, Erode District.
 - 5.The District Collector, Erode District.
 - 6.The Director General of Police, Mylapore, Chennai-4.
 7. The Inspector of Police
Kavundapadi Police Station
Erode District.
 - 8.The Superintendent of Prison, Central Prison,
Coimbatore.
 9. The Pulicb Prosecutor,
High Court, Chennai.
 - 10.The Section Officer, Criminal Section, High Court, Madras.
- +1cc to Mr.P.Dinesh Kumar, Advocate sr.37293

ala(co)
ss(25/01/2017)

Judgment in
Crl.A.No.616 of 2015

सत्यमेव जयते

WEB COPY